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SAN FRANCISCO, 1945

Tome XIV

COMITÉ DE JURISTES DES NATIONS UNIES

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1945
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DOCUMENTS

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UNITED NATIONS CONFERENCE
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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

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Jurist 84(39)
G/71
April 28, 1945

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Washington, D. C.

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Jurist 29(9)
G/21
April 12, 1945

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Jurist 83(29)
G/70

April 20, 1945

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Jurist 42
G/32
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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 4
C/4
April 9, 1945

MINUTES OF FIRST PLENARY SESSION

Departmental Auditorium, April 9, 1945, 11 a.m.

The first plenary session of the United Nations Committee of Jurists was opened at 11 a.m. on Monday, April 9, 1945, by the Secretary of State of the United States of America, Mr. Edward R. Stettinius, Jr.

Mr. Stettinius addressed the meeting as follows:

"Your Excellencies, Members of the Committee of Jurists of the United Nations, Ladies and Gentlemen:

"It is a pleasure for me, on behalf of the President and people of the United States, to welcome our distinguished guests.

"Your presence here attests your resolve and the resolve of your Governments to strengthen that great arm of human protection which finds expression in the administration of justice. Nor is the significance of this meeting felt merely by the people of this land; the peace-loving peoples of the world look to you, to this Committee of Jurists, to give voice to their high resolve that differences between nations, no less than between individuals, should be settled by peaceful methods and on a basis of justice.

"In 1920 a Committee of Jurists met at The Hague and drafted a Statute for the Permanent Court of International Justice. That Statute, as approved by the Council and Assembly of the League of Nations, was amended in certain respects in 1929 by another Committee of Jurists. We are proud that a great American statesman, the late Elihu Root, served on each of those Committees.

"At Dumbarton Oaks it was proposed that there should be an International Court of Justice which should constitute the principal judicial organ of the contemplated International Organization; that the Statute of the Court should be either the present Statute of the Permanent

Court of International Justice to which I have just referred, to continue in force with such modifications as may be desirable, or a new Statute based upon the existing Statute; and that the Statute should be a part of the Charter of the International Organization.

"It is scarcely possible to envisage the establishment of an International Organization for the maintenance of peace without having as a component part thereof a truly international judicial body.

"Those who participated in the conversations at Dumbarton Oaks left to the future the task which you are about to undertake. If the Statute of such a Court is to form part of the Charter of the new International Organization, steps must now be taken to formulate such an instrument for consideration at the forthcoming Conference of the United Nations at San Francisco. It was because of this that the members of the United Nations were invited to send representatives to Washington for this work.

"The war-weary world is committing to your hands, in the first instance, the responsibility of preparing recommendations. To your measured judgment, the people of the world, with faith in order under justice, entrust this important initial work.. With knowledge born of the experiences of the past, and with hearts lifted by the great victories won by the United Nations over the enemies of law and human rights, you come with a mandate to make your contribution to the establishment of a peaceful world order.

"With high confidence that the results of your labors will redound to the benefit of all mankind, I hereby open this meeting of the Committee of Jurists of the United Nations."

Dr. Wang Chung-hui, Representative of China, then addressed the meeting as follows:

"Mr. Chairman, Your Excellencies, Members of the Committee of Jurists of the United Nations, Ladies and Gentlemen:

"It is my great privilege to rise and respond to the address so ably and appropriately delivered by our Chairman on the occasion of the opening of the first plenary session of the Committee of Jurists of the United Nations.

"We thank you, Mr. Chairman, for the cordial welcome you extended to all of us. We completely associate ourselves with the sentiments and hopes you have expressed.

"In the words of the Dumbarton Oaks Proposals: 'All members of the Organization shall settle their disputes by peaceful means in such a manner that international peace and security are not endangered.' One of such means is. of course, judicial settlement.

"In endeavoring to organize an International Court, we are not treading on new ground; we are rather to improve upon a system that has been in existence for almost a quarter of a century. No one can deny that the Permanent Court of International Justice has made a valuable contribution to the peaceful settlement of international disputes. If there are imperfections or inherent defects in the organization of the Court, it is only because those who framed its Statute could not have, under the circumstances then existing, drawn up a better project.

"Now we are called upon either to adopt the existing Statute with modifications or to frame a new Statute based upon the existing one. Whichever course we may pursue, the present Statute of the Permanent Court of International Justice will serve as an indispensable document for our work.

"We know that whatever organization may be created for the maintenance of world peace and security, there must be established the rule of law among nations and there must be cultivated among them the spirit of respect for law. It is, therefore, the duty of the Committee to recommend the establishment of such a Court as will become one of the most important and effective agencies for the pacific settlement of international disputes.

"It is undoubtedly our common hope that the labors of this Committee will help to make the forthcoming Conference at San Francisco a success. With a spirit of cooperation and with a singleness of purpose we shall not fail in our task.

"I am sure I am voicing the feelings of all those present when I express our appreciation to the American Government for its kind and hospitable reception of the representatives of the participating nations."

Sir Michael Myers, Representative of New Zealand, then addressed the meeting as follows:

"Mr. Secretary, Your Excellencies, Members of the Committee of Jurists of the United Nations, Ladies and Gentlemen:

"I should like to assure you of the appreciation that my country of New Zealand will feel, and of my own appreciation, of the honor paid to my Dominion and myself in inviting me to speak on this opening day of the proceedings of this important Committee.

"I would also express, for myself and my fellow delegates, our appreciation of your welcome, Mr. Secretary, and of the motives which have impelled the President of the United States, in conjunction with other powers, to call this Committee together for the purpose which you, Mr. Secretary, have briefly but fully outlined.

"May I say, Mr. Secretary--and I am sure that this cannot be regarded as an invidious distinction--how glad we all are to see amongst us as one of the delegates, Dr. Wang Chung-hui, who is himself a former judge of the present Permanent Court of International Justice.

"No doubt there will be matters relating to the preparation of the Statute upon which at the outset at all events there may be differences of opinion but I take it that in some respects relations between nations are much the same as between individuals, that is to say, no person as between persons and no nation as between nations can reasonably expect to have his or its own way in everything. There must be a certain amount of readiness to give and take. It would be entirely out of place for me at this stage to refer to any matter of possible initial difference or, indeed, to refer at all in any detail to the matters which may come before this Committee. Suffice it to say that the nations of the world are at the parting of the ways. Either they go forward to peace and security, or they go back to barbarism. There can be no two opinions that one of the steps necessary to lead to permanent peace and security is the establishment of a Permanent Court of International Justice which may decide in a peaceful manner disputes, at all events disputes on justiciable matters, which may actually or perhaps even potentially arise as between nation and nation. This Committee has been called together with a view to framing an appropriate Statute for that purpose. If we succeed we shall have performed a great work for international harmony, peace, and security. Failure would be a world tragedy, but I am optimistic enough to believe that men of common sense and good will should be able to prepare a Statute which will satisfy the necessities of the case and be the means of preventing international dissension and strife."

Mr. Stettinius announced that Mr. Green H. Hackworth, Legal Adviser of the Department of State of the United

States, had been appointed to serve as Chairman Pro Tempore of the Committee of Jurists until the election of the permanent Chairman at the afternoon meeting.

The first plenary session adjourned at 11:35 a.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 55(4)
G/43
April 16, 1945

MINUTES OF FIRST PLENARY SESSION
(Revised)
Departmental Auditorium, April 9, 1945, 11 a.m.

The first plenary session of the United Nations Committee of Jurists was opened at 11 a.m. on Monday, April 9, 1945, by the Secretary of State of the United States of America, Mr. Edward R. Stettinius, Jr

Mr. Stettinius addressed the meeting as follows:

"Your Excellencies, Members of the Committee of Jurists of the United Nations, Ladies and Gentlemen:

"It is a pleasure for me, on behalf of the President and people of the United States, to welcome our distinguished guests.

"Your presence here attests your resolve and the resolve of your Governments to strengthen that great arm of human protection which finds expression in the administration of justice. Nor is the significance of this meeting felt merely by the people of this land; the peace-loving peoples of the world look to you, to this Committee of Jurists, to give voice to their high resolve that differences between nations, no less than between individuals, should be settled by peaceful methods and on a basis of justice.

"In 1920 a Committee of Jurists met at The Hague and drafted a Statute for the Permanent Court of International Justice. That Statute, as approved by the Council and Assembly of the League of Nations, was amended in certain respects in 1929 by another Committee of Jurists. We are proud that a great American statesman, the late Elihu Root, served on each of those Committees.

"At Dumbarton Oaks it was proposed that there should be an International Court of Justice which should constitute the principal judicial organ of the contemplated International Organization; that the Statute of the Court should be either the present Statute of the Permanent

Court of International Justice to which I have just referred, to continue in force with such modifications as may be desirable, or a new Statute based upon the existing Statute; and that the Statute should be a part of the Charter of the International Organization.

"It is scarcely possible to envisage the establishment of an International Organization for the maintenance of peace without having as a component part thereof a truly international judicial body.

"Those who participated in the conversations at Dumbarton Oaks left to the future the task which you are about to undertake. If the Statute of such a Court is to form part of the Charter of the new International Organization, steps must now be taken to formulate such an instrument for consideration at the forthcoming Conference of the United Nations at San Francisco. It was because of this that the members of the United Nations were invited to send representatives to Washington for this work.

"The war-weary world is committing to your hands, in the first instance, the responsibility of preparing recommendations. To your measured judgment, the people of the world, with faith in order under justice, entrust this important initial work.. With knowledge born of the experiences of the past, and with hearts lifted by the great victories won by the United Nations over the enemies of law and human rights, you come with a mandate to make your contribution to the establishment of a peaceful world order.

"With high confidence that the results of your labors will redound to the benefit of all mankind, I hereby open this meeting of the Committee of Jurists of the United Nations."

Dr. Wang Chung-hui, Representative of China, then addressed the meeting as follows:

"Mr. Chairman, Your Excellencies, Members of the Committee of Jurists of the United Nations, Ladies and Gentlemen:

"It is my great privilege to rise and respond to the address so ably and appropriately delivered by our Chairman on the occasion of the opening of the first plenary session of the Committee of Jurists of the United Nations.

"We thank you, Mr. Chairman, for the cordial welcome you extended to all of us. We completely associate ourselves with the sentiments and hopes you have expressed.

"In the words of the Dumbarton Oaks Proposals: 'All members of the Organization shall settle their disputes by peaceful means in such a manner that international peace and security are not endangered.' One of such means is, of course, judicial settlement.

"In endeavoring to organize an International Court, we are not treading on new ground; we are rather to improve upon a system that has been in existence for almost a quarter of a century. No one can deny that the Permanent Court of International Justice has made a valuable contribution to the peaceful settlement of international disputes. If there are imperfections or inherent defects in the organization of the Court, it is only because those who framed its Statute could not have, under the circumstances then existing, drawn up a better project.

"Now we are called upon either to adopt the existing Statute with modifications or to frame a new Statute based upon the existing one. Whichever course we may pursue, the present Statute of the Permanent Court of International Justice will serve as an indispensable document for our work.

"We know that whatever organization may be created for the maintenance of world peace and security, there must be established the rule of law among nations and there must be cultivated among them the spirit of respect for law. It is, therefore, the duty of the Committee to recommend the establishment of such a Court as will become one of the most important and effective agencies for the pacific settlement of international disputes.

"It is undoubtedly our common hope that the labors of this Committee will help to make the forthcoming Conference at San Francisco a success. With a spirit of cooperation and with a singleness of purpose we shall not fail in our task.

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"I would also express, for myself and my fellow delegates, our appreciation of your welcome, Mr. Secretary, and of the motives which have impelled the President of the United States, in conjunction with other powers, to call this Committee together for the purpose which you, Mr. Secretary, have briefly but fully outlined.

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Mr. Stettinius announced that Mr. Green H. Hackworth, Legal Adviser of the Department of State of the United

States, had been appointed to serve as Chairman Pro Tempore of the Committee of Jurists until the election of the permanent Chairman at the afternoon meeting and that Mr. Lawrence Preuss of the Department of State had been designated Principal Secretary.

The first plenary session adjourned at 11:35 a.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 11
G/8
April 9, 1945

SUMMARY OF FIRST MEETING

Interdepartmental Auditorium, Committee Room B
Monday, April 9, 1945, 3 p.m.

Present at the meeting were the following delegates of the United Nations:

United States of America: Mr. Green H. Hackworth, Chairman Pro Tempore
Australia: The Rt. Hon. H. V. Evatt
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Sr. A. Camillo de Oliveira
Canada: Mr. John E. Read
Chile: Sr. Marcial Mora
China: Dr. Hsu Mo
Colombia: Sr. R. Urdaneta A.
Costa Rica: Sr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
Dominican Republic: Sr. José Ramon Rodriguez
Ecuador: Sr. L. Neftali Ponce
Egypt: Pasha Hafez Ramadan
El Salvador: Sr. Hector David Castro
Ethiopia: Dr. Ombayé Woldemariam
France: M. Jules Basdevant
Guatemala: Dr. Enrique Lopez-Herrarte
Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: Mr. C. L. Simpson
Luxembourg: M. Hugues Le Gallais
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Star-Busmann
New Zealand: Sir Michael Myers
Norway: M. Lars J. Jorstad
Panama: Sr. Narciso E. Garay
Paraguay: Dr. Celso R. Velázquez
Peru: Dr. Arturo Garcia
Philippine Commonwealth: Dr. José F. Imperial
Saudi Arabia: Mr. Ossad El-Fakih
Syria: Mr. Costi K. Zurayk

Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics: Mr. N. C. Novikov
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. Lorenzo Vincens Thievent
Venezuela: Dr. Diógenes Escalante
Yugoslavia: Dr. Stoyan Gavrilovic

Mr. Hackworth, presiding as Chairman Pro Tempore, called the first business session of the United Nations Committee of Jurists to order.

He stated that the purpose of the meeting of jurists is to prepare a draft Statute for a Court of International Justice to present to the United Nations Conference at San Francisco for discussion. He pointed out that the present meeting was only a preliminary conference and was not empowered to take definitive action, but rather to prepare recommendations as experts. Mr. Hackworth then expressed his belief that the Committee would be able to work with complete harmony and his hope that it would be able to finish its task before the group's departure for San Francisco on the special train being provided for it on April 20.

After a brief interruption for the taking of pictures of the session, Mr. Hackworth proceeded with the items of business on the agenda.

The first item of business was the election of a permanent Chairman of the Committee. Mr. Fitzmaurice (United Kingdom), speaking on behalf of his Government, nominated Mr. Hackworth. Dr. Wang (China), Sr. Cordova (Mexico), M. Basdevant (France) and Hafez Ramadan Pasha (Egypt), in the order named, arose to give their warm endorsement to the nomination proposed by the delegate of the United Kingdom. In accordance with the proposal of M. Basdevant, Mr. Hackworth was elected permanent Chairman of the Committee by acclamation. Mr. Hackworth expressed his appreciation to the Committee for the honor that had been paid him and stated that he was deeply impressed with the importance of the task entrusted to him. He expressed the hope that the Committee would be able to work together in a spirit of complete accord, and he thought that the results of the Committee's work would prove emminently satisfactory at the San Francisco Conference.

Mr. Hackworth then informed the Committee that since three other Governments, the Soviet Union, China, and the United Kingdom, were also sponsoring the meeting, he intended to invite his colleagues from the other sponsoring powers to take the Chair from time to time at the meetings. In view of this, he asked the Committee if there would be any real need for a Vice Chairman. It was agreed, accordingly, not to elect a Vice Chairman.

Mr. Hackworth then called for nominations for the Rapporteur for the Committee. Mr. Jorstad (Norway) proposed M. Basdevant for this position. This nomination was seconded by Sr. Ramon (Dominican Republic) and by M. de Visscher (Belgium). M. Basdevant was then elected Rapporteur, and he also expressed his appreciation to the Committee for the honor accorded him.

Mr. Hackworth then raised the question of rules of procedure for the Committee. He noted that it was usual to appoint a steering committee, but thought that this might be dispensed with until the delegates could see how the work progressed.

Mr. Hackworth suggested that, with respect to publicity, the plenary sessions of the Committee be open to the public, but that the working sessions of the Committee and of any subcommittees be closed.

Mr. Hackworth proposed that it be agreed that no draft amendment would be discussed or put to a vote unless the text had been previously circulated in writing.

With regard to voting procedure, Mr. Hackworth suggested that each delegation have one vote. He further suggested that on questions of procedure or of membership in any subcommittees, a simple majority vote would be sufficient. He felt, however, that the adoption of a final report of the Committee should be by a two-thirds majority vote. He expressed the hope that the final report would be adopted by a unanimous vote, but felt that certainly a two-thirds majority vote would be necessary if the report were to receive serious consideration at the San Francisco Conference.

With respect to languages, Mr. Hackworth suggested that, in order to expedite the Committee's work, the speeches in the plenary sessions of the Committee be given in English, if convenient. He thought that delegates speaking in other languages might give English translations and provide interpreters, if possible; but added that the secretariat would provide assistants, when needed, in translating and interpreting. He further proposed that English be used whenever possible in any subcommittee meetings; and that the delegates provide their own interpreters when necessary to enable them to follow the discussions in English.

Mr. Hackworth stated that the secretariat would provide assistance, when needed, of interpretations from Russian, French, and Spanish into English. Mr. Hackworth then introduced Mr. Lawrence Preuss, Principal Secretary, to the Committee and informed the delegates that Mr. Preuss would arrange for necessary assistance from the secretariat.

Mr. Hackworth proposed that all documents and records issued from day to day be in English. He said that the secretariat would be prepared to assist the delegations in translating Russian, French, or Spanish drafts into English for circulation. Moreover, Mr. Hackworth stated that the secretariat would comply, as possible, with requests for assistance in translating draft texts or proposals into Russian, French, or Spanish.

Mr. Hackworth proposed that the report of the Committee to the United Nations Conference at San Francisco be made in English, and that the English text be signed. He added that so far as time permitted, Russian, French, and Spanish translations would be prepared by the secretariat for distribution at the Conference when the Committee's report is submitted.

Mr. Hackworth then asked the delegates to express their views as to these suggestions, and also asked if they preferred to appoint a special committee on rules.

Sr. Castro (El Salvador) moved that the rules of procedure proposed by Mr. Hackworth (which he noted were similar to rules proposed in other United Nations meetings) be adopted, subject to subsequent amendment if necessary. M. Star-Busmann (Netherlands) seconded this motion.

Mr. Fitzmaurice proposed, in connection with the rule that amendments be circulated in writing, that it should be open to the delegates to submit amendments either in the form of an actual text of a draft Statute or in the form of a description of the amendment desired.

M. Nisot (Belgium) then stated that while it was necessary that the rules be as simple as possible, the work must be precise. Therefore, he felt that since the present Statute of the Permanent Court of International Justice is in two languages, English and French, all amendments to the Statute should be submitted both in English and French.

The Committee adopted these proposals for rules of procedure, including Mr. Fitzmaurice's proposal, with respect to the form of proposed amendments, and M. Basdevant's proposal with respect to submitting proposed amendments in English and French.

Mr. Hackworth then announced that a number of background documents would be distributed to all the delegations at the close of the session.

Mr. Hackworth declared that the most important question to be decided at this time was the basis for the discussions of the Committee. He pointed out that in the Dumbarton Oaks Proposals, chapter VII, paragraph 3, it was stated that the Statute of the International Court of Justice should be either (a) the Statute of the Permanent Court of International Justice with such modifications as might be required or (b) a new Statute using the Statute of the Permanent Court as a basis. Mr. Hackworth said that it would be desirable for the Committee to decide which of these alternatives it wished to adopt. He suggested that it might be preferable to adopt the first, namely, the Statute of the Permanent Court with necessary modifications. One reason for this choice was that it would facilitate rapid work and might enable the Committee to complete its deliberations before departing for San Francisco.

Sr. Dihigo (Cuba) declared that the Cuban delegation had prepared a project for a new Court which it would like to be able to present to the Committee. Mr. Hackworth agreed that whatever decision was reached on the basis of work, the Cuban delegation would be able to present its draft project.

Sr. Castro stated that in the opinion of his Government continuity with the Permanent Court of International Justice was desirable but he suggested that it might be difficult to attain in view of the fact that some of the States who were members of the United Nations were not signatories of the Statute of the Permanent Court. He also pointed out that the Permanent Court of International Justice was the first permanent court of world-wide scope. There had been, however, a Central American Court of Justice which was the first permanent court in the world. This Court had existed from 1907 to 1917. In its jurisdiction, there had been no distinction between justiciable and non-justiciable disputes. All controversies could be submitted to the Court, and no State could take action before submitting its controversy to the Court. Furthermore, all were bound to abide by the awards of the Court. He suggested that the Statute of the Central American Court of Justice should be distributed for the information of the Committee.

Mr. Hackworth declared that it was satisfactory for El Salvador to make this distribution.

Sr. Mora (Chile) declared that to facilitate rapid action it would be desirable to take the Statute of the Permanent Court as the basis of the Committee's discussions. He pointed out that the Statute had been in operation for many years, that it had been prepared by a distinguished committee, and that it had set up valuable rules and had worked satisfactorily. He pointed out that it covered all the aspects of Court procedure and that it was well written. He thought it desirable that the Committee should draw upon the experience and knowledge represented in this Statute. He pointed out, however, that there was need for change to adopt the Statute to new situations. In accordance with the Dumbarton Oaks Proposals, he suggested that changes should be made to be agreed upon at San Francisco.

Professor Bilsel (Turkey) declared that Turkey had often appeared before the Permanent Court and while it had not always agreed with the decisions of the Court, it had always been convinced that the Court answered the needs of the countries which wanted to submit cases to it. He, therefore, agreed that the Statute of the Court should be the basis of the deliberations of the Committee.

Mr. Simpson (Liberia) said that in the opinion of his Government it was desirable to use the existing Statute as a basis for deliberations although the Statute should undergo certain modifications.

Mr. Jorstad said that he was in agreement with using the present Statute and that Norway too had often appeared before the Court and had always received fair treatment.

Mr. Novikov (Soviet Union) suggested that the Committee take the present Statute as the basis for its work on the ground that this would facilitate the work of the Committee and would enable it to prepare a Statute for consideration at San Francisco. He wished to stress, however, that he was speaking for himself only and that the view of his Government had not been officially defined.

M. Nisot remarked that he believed that none of the delegates were in a position to commit their Governments.

Mr. Hackworth said that the task of the Committee was to agree upon recommendations for submission to the San Francisco Conference. That Conference might not accept the recommendations and the Governments there represented would be free to take whatever action they desired.

Dr. Evatt (Australia) said that his Government would not be bound at San Francisco to abide by any decisions reached at this meeting.

Mr. Hackworth agreed that the Committee could not bind the various Governments represented.

Sr. Dihigo said that the Cuban project had been drafted by Dr. Bustamente, a judge of the Permanent Court of International Justice and a professor at the University of Habana. This project embodied the results of long years of experience with the Statute of the Court.

Mr. Read (Canada) stated that he was in complete agreement with the view that the existing Statute should be made the basis of the Committee's deliberations. He declared, however, that he was not quite clear whether the results of the Committee's discussions would be proposals for the amendment of the existing Statute or for a consolidated Statute. He hoped that the result would be a consolidated Statute. He was not certain, moreover, how it would be possible to get around the difficulty that the present Statute was regarded as incapable of amendment without the consent of all the signatories. He pointed out that some of these signatories were not represented at this meeting, notably the enemy States. Furthermore, some of the States that were represented at the meeting were not signatories to the Statute. He thought that the Committee might take up the present Statute and recommend revisions to be embodied in a new international agreement which would re-invigorate the Permanent Court. He hoped that it would be possible to provide for the functioning of the Court until the agreement of States not represented at the San Francisco meeting was secured. He thought it would be desirable to continue the Court and thus give legal and moral vigor to it.

Mr. Hackworth declared that the Dumbarton Oaks Proposals contemplated an International Court of Justice which should be an organ of the International Organization and that the Statute of the Court should be annexed to and be a part of the Charter of the new International Organization. The mission of the Committee was to prepare a Statute for submission to the San Francisco Conference and he suggested that the Statute of the Permanent Court would be a useful basis for the discussions of the Committee since it would expedite consideration of the problems involved. He felt that to draft a new Statute would be quite difficult in the time at the disposal of the Committee. If the Statute of the present Court were used as a model, it would be possible to make necessary changes. He asked whether it was the wish of the Committee to take the present Statute as the basis of discussion, making whatever changes were necessary or to try to draft a new Statute using the present Statute as a guide. He said that the work of the Committee was to consider the Statute of an International Court. Other questions about the attainment of agreement upon the Statute were not within the purview of the Committee since political questions were not of concern to this technical group.

Mr. Fitzmaurice said that of the two alternatives the United Kingdom preferred the continuance in force, with modifications, of the present Statute. The United Kingdom, however, believed that certain changes were necessary if the existing Statute were to form a worthy annex to the Charter of the United Nations. It considered the work of the Committee of great importance and believed that the Statute which might result from deliberations of the Committee would be as important in the juridical field as the Charter of the International Organization would be in the political field. He explained that the Government of the United Kingdom had considered the question of the juridical organization of such importance that it had sponsored the formation of the informal Inter-Allied Committee on the Future of the Permanent Court of International Justice. This Committee was composed of experts, many of whom were appointed by various European Governments having their headquarters in London. The discussions of this group of experts were in no way binding upon the Governments concerned, although the experts agreed to recommend them to their Governments. The unanimous recommendations reached represented the best views of a group well acquainted with the work of the Court and were therefore deserving of careful consideration. The report of the Inter-Allied Committee would be made available for distribution to the Jurists Committee. The United Kingdom found itself in general agreement with the report, though certain aspects of it might be affected by the conclusions reached at Dumbarton Oaks. Mr. Fitzmaurice did not think it would be satisfactory to take the existing Statute and make only such changes as would be necessary to relate the Court to the new International Organization instead of to the League. He thought that it might be desirable to make certain changes of substance, for it would be surprising if the Statute needed no alteration of substance after 20 years. Furthermore, there was the question of timing. If modifications of substance were desirable, the United Kingdom believed that the proper time to make them was now, or at least before the end of the San Francisco meeting and before the Statute was annexed to the Charter of the new Organization.

In this connection, he said he would like to call attention to the views of Sir Cecil Hurst who was well known to the group, at least by reputation. Writing in the Law Quarterly Review in 1943, Sir Cecil said that in 20 years the Statute of the Court had been subjected to considerable testing. The break in the life of the Court because of the German occupation of The Hague afforded an opportunity for making changes which experience had shown to be necessary. If the Court is to be more important in the future, the opportunity of introducing changes at this time should not be missed. The United Kingdom Government believed that if action were not taken now or before the end of the San Francisco meeting, it would be difficult to introduce amendments perhaps for some years. The difficulty would be moral and political rather than legal. If the present opportunity of making changes of substance were not seized, it would be missed. Mr. Fitzmaurice thought it would not be enough to have an amendment clause. If the Statute were annexed to the Charter it should represent the best that legal talent could devise, for the reason that it would be difficult to make revisions for some time thereafter. People would take the view that amendments should be made here or at San Francisco in order that a definitive Statute could be incorporated in the Charter of the Organization. If the work were not completed here, there should be no difficulty in completing it at San Francisco.

M. Nisot declared that he shared the view that the Court had been tested, and he thought that the Statute should be used as the basis of deliberation and that desirable amendments should be made. He pointed out, however, that caution should be exercised since the form of the world organization is not yet known.

Sr. de Oliveira (Brazil) agreed with this point of view.

Dr. Mo (China) declared that he supported the proposal to take the Statute of the present Court as the basis of discussion in order to facilitate the work.

M. Kernisan (Haiti) thought that it would be well to conserve the desirable features of the old Statute and take it as the basis for discussion in view of the shortness of the time.

Mr. Abbass (Iraq) thought that there were many reasons for using the present Statute. The Court had worked well and the use of its Statute would facilitate the work of the Committee. Furthermore, he thought it was desirable to awaken strong support for judicial organization and that the use of the present Statute would give an impetus to the development of legal institutions. He thought there was psychological value in basing discussions on the present Statute.

Mr. Hackworth asked for a show of hands on the question whether the Committee should base its work on the existing Statute. There were no objections to this proposal.

Mr. Hackworth said that there was a further question to be considered in connection with the procedure of the Committee. It would be possible for the whole Committee to go over the Statute and make note of suggestions for revision, or it would be possible for the Committee to divide into two or more committees. Perhaps one committee could consider the first 33 articles of the Statute which dealt with the organization of the Court. The other might consider the jurisdiction and procedure of the Court and advisory opinions. He inquired the pleasure of the Committee as to its procedure in this regard.

Dr. Cordova thought that it would be desirable for the whole Committee to review the Statute. He thought that it would be difficult to have two separate committees considering different parts of it since the decisions of one might not harmonize with the decisions of the other. He thought it would be better for the whole Committee to go over the Statute.

Dr. Lopez-Herrarte (Guatemala) agreed with the point of view of the Mexican delegate.

Mr Abbass believed that the two committees might disagree. He thought it would be desirable for the whole Committee to go over the Statute and then to decide what points needed to be referred for further discussion.

Mr. Hackworth asked whether the Committee agreed that it would be preferable for the whole Committee to review the Statute article by article before dividing into smaller committees. There was no opposition to this proposal.

Mr. Hackworth announced that the next session of the Committee would take place in the same room at 10 a.m. the following morning, April 10.

The meeting was adjourned at 4:55 p.m. In declaring the meeting adjourned, Mr. Hackworth said that he wished to thank the delegates for the spirit of cooperation which had been exhibited at the meeting,

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
JURIST 36 (11)
G/26
April 13, 1945

SUMMARY OF FIRST MEETING

(Revised)

Interdepartmental Auditorium, Conference Room B
Monday, April 9, 1945, 3 p.m.

Present at the meeting were the following representatives of the United Nations:

United States of America: Mr. Green H. Hackworth, Chairman Pro Tempore
Australia: Sir Frederic Eggleston (Alternate)
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Minister A. Camillo de Oliveira
Canada: Mr. John E. Read
Chile: Ambassador Marcial Mora
China: Dr. Wang Chung-hui
Colombia: Sr. R. Urdaneta A.
Costa Rica: Sr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
Dominican Republic: Sr. José Ramon Rodriguez
Ecuador: Sr. L. Neftali Ponce
Egypt: Hafez Ramadan Pacha
El Salvador: Ambassador Hector David Castro
Ethiopia: Dr. Ambayé Woldemariam
France: M. Jules Basdevant
Guatemala: Dr. Enrique Lopez-Herrarte
Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: The Hon. C. L. Simpson
Luxembourg: Minister Hugues Le Gallais
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Star-Busmann
New Zealand: The Rt. Hon. Sir Michael Myers
Nicaragua: Ambassador Guillermo Sevilla-Sacasa
Norway: M. Lars J. Jorstad
Panama: Sr. Narciso E. Garay
Paraguay: Dr. Celso R. Velázquez
Peru: Dr. Arturo Garcia
Philippine Commonwealth: Dr. José F. Imperial (Adviser)

Saudi Arabia: His Excellency Assad El-Fakih
Syria: M. Costi K. Zurayk
Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics: Mr. N. V. Novikov
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. Lorenzo Vincens Thievent
Venezuela: Dr. Diógenes Escalante
Yugoslavia: The Hon. Dr. Stojan Gavrilovic

Mr. Hackworth, presiding as Chairman Pro Tempore, called the first business session of the United Nations Committee of Jurists to order.

He stated that the purpose of the meeting of jurists is to prepare a draft Statute for an international court of justice to present to the United Nations Conference at San Francisco for discussion. He pointed out that the present meeting was only a preliminary conference and was not empowered to take definitive action, but rather to prepare recommendations as experts. Mr. Hackworth then expressed his belief that the Committee would be able to work with complete harmony and his hope that it would be able to finish its task before the group's departure for San Francisco on the special train being provided for it on April 20.

After a brief interruption for the taking of pictures of the session, Mr. Hackworth proceeded with the items of business on the agenda.

The first item of business was the election of a permanent Chairman of the Committee. Mr. Fitzmaurice (United Kingdom), speaking on behalf of his Government, nominated Mr. Hackworth. Dr. Wang (China), Ambassador Cordova (Mexico), M. Basdevant (France) and Hafez Ramadan Pacha (Egypt), in the order named, arose to give their warm endorsement to the nomination proposed by the delegate of the United Kingdom. In accordance with the proposal of Ambassador Cordova, Mr. Hackworth was elected permanent Chairman of the Committee by acclamation. Mr. Hackworth expressed his appreciation to the Committee for the honor that had been paid him and stated that he was deeply impressed with the importance of the task entrusted to him. He expressed the hope that the Committee would be able to work together in a spirit of complete accord, and he thought that the results of the Committee's work would prove eminently satisfactory at the San Francisco Conference.

The Chairman then informed the Committee that since three other Governments, the Soviet Union, China, and the United Kingdom, were also sponsoring the meeting, he intended to invite his colleagues from the other sponsoring powers to take the Chair from time to time at the meetings. In view of this, he asked the Committee if there would be any real need for a Vice Chairman. It was agreed, accordingly, not to elect a Vice Chairman.

The Chairman then called for nominations for the Rapporteur for the Committee. M. Jorstad (Norway) proposed M. Basdevant for this position. This nomination was seconded by Sr. Dihigo (Cuba) and by M. Nisot (Belgium). Mr. Basdevant was then elected Rapporteur, and he also expressed his appreciation to the Committee for the honor accorded him.

The Chairman then raised the question of rules of procedure for the Committee. He noted that it was usual to appoint a steering committee, but thought that this might be dispensed with until the delegates could see how the work progressed.

The Chairman suggested that, with respect to publicity, the plenary sessions of the Committee be open to the public, but that the working sessions of the Committee and of any subcommittees be closed.

The Chairman proposed that it be agreed that no draft amendment would be discussed or put to a vote unless the text had been previously circulated in writing.

With regard to voting procedure, the Chairman suggested that each delegation have one vote. He further suggested that on questions of procedure and conclusions in any subcommittees, a simple majority vote would be sufficient. He felt, however, that the adoption of the final report of the Committee should be by a two-thirds majority vote. He expressed the hope that the final report would be adopted by a unanimous vote, but felt that certainly a two-thirds majority vote would be necessary if the report were to receive serious consideration at the San Francisco Conference.

With respect to languages, the Chairman suggested that, in order to expedite the Committee's work, the speeches in the plenary sessions of the Committee be given in English, if convenient. He thought that delegates speaking in other languages might give English translations and provide interpreters, if possible; but added that the secretariat would provide assistance, when needed, in translating and interpreting from Russian, French, and Spanish into English. He further proposed that English be used whenever possible in any subcommittee meetings;

and that the delegates provide their own interpreters when necessary to enable them to follow the discussions in English. The Chairman stated that the secretariat would provide assistance, when needed, of interpretations from Russian, French, and Spanish into English. The Chairman then introduced Mr. Lawrence Preuss, Principal Secretary, to the Committee and informed the delegates that Mr. Preuss would arrange for necessary assistance from the secretariat.

The Chairman proposed that all documents and records issued from day to day be in English. He said that the secretariat would be prepared to assist the delegations in translating Russian, French, or Spanish drafts into English for circulation. Moreover, the Chairman stated that the secretariat would comply, as possible, with requests for assistance in translating draft texts or proposals into Russian, French, or Spanish.

The Chairman proposed that the report of the Committee to the United Nations Conference at San Francisco be made in English, and that the English text be signed. He added that so far as time permitted, Russian, French, and Spanish translations would be prepared by the secretariat for distribution at the Conference when the Committee's report is submitted.

The Chairman then asked the delegates to express their views as to these suggestions, and also asked if they preferred to appoint a special committee on rules.

Ambassador Castro (El Salvador) moved that the rules of procedure proposed by the Chairman (which he noted were similar to rules proposed in other United Nations meetings) be adopted, subject to subsequent amendment if necessary. M. Star-Busmann (Netherlands) seconded this motion.

Mr. Fitzmaurice (United Kingdom) proposed, in connection with the rule that amendments be circulated in writing, that it should be open to the delegates to submit amendments either in the form of an actual text of a draft article of the Statute or in the form of a description of the amendment desired.

M. Basdevant (France) then stated that while it was necessary that the rules be as simple as possible, the work must be precise. Therefore, he felt that since the present Statute of the Permanent Court of International Justice is in two languages, English and French, all amendments to the Statute should be submitted both in English and French and both texts should be equally valid.

The Committee adopted these proposals for rules of procedure, including Mr. Fitzmaurice's proposal, with respect to the form of proposed amendments, and M. Basdevant's proposal with respect to submitting proposed amendments in English and French in view of the special form of the Statute.

The Chairman then announced that a number of background documents would be distributed to all the delegations at the close of the session.

The Chairman declared that the most important question to be decided at this time was the basis for the discussions of the Committee. He pointed out that in the Dumbarton Oaks Proposals, chapter VII, paragraph 3, it was stated that the Statute of the international court of justice should be either (a) the Statute of the Permanent Court of International Justice with such modifications as might be required or (b) a new Statute using the Statute of the Permanent Court as a basis. The Chairman said that it would be desirable for the Committee to decide which of these alternatives it wished to adopt. He suggested that it might be preferable to adopt the first, namely, the Statute of the Permanent Court with necessary modifications. One reason for this choice was that it would facilitate rapid work and might enable the Committee to complete its deliberations before departing for San Francisco.

Sr. Dihigo (Cuba) declared that the Cuban delegation had prepared a project for a new Court which it would like to be able to present to the Committee. The Chairman agreed that whatever decision was reached on the basis of work, the Cuban delegation would be able to present its draft project.

Ambassador Castro (El Salvador) stated that in the opinion of his Government continuity with the Permanent Court of International Justice was desirable but he suggested that it might be difficult to attain in view of the fact that some of the States who were members of the United Nations were not signatories of the Statute of the Permanent Court. He also pointed out that the Permanent Court of International Justice was the first permanent court of world-wide scope. There had been, however, a Central American Court of Justice which was the first permanent court in the world. This Court had existed from 1907 to 1917. In its jurisdiction, there had been no distinction between justiciable and non-justiciable disputes. All controversies could be submitted to the Court, and no State could take action before submitting its controversy to the Court. Furthermore, all were bound to abide by the awards of the Court. He suggested that the Statute of the Central American Court of Justice should be distributed for the information of the Committee.

The Chairman declared that the Committee would welcome the distribution of this important document by the representative of El Salvador.

Ambassador Mora (Chile) declared that to facilitate rapid action it would be desirable to take the Statute of the Permanent Court as the basis of the Committee's discussions. He pointed out that the Statute had been in operation for many years, that it had been prepared by a distinguished committee, and that it had set up valuable rules and had worked satisfactorily. He pointed out that it covered all the aspects of Court procedure and that it was well written. He thought it desirable that the Committee should draw upon the experience and knowledge represented in this Statute. He pointed out, however, that there was need for change to adopt the Statute to new situations. In accordance with the Dumbarton Oaks Proposals, he suggested that changes should be made to be agreed upon at San Francisco.

Professor Bilsel (Turkey) declared that Turkey had often appeared before the Permanent Court and while it had not always agreed with the decisions of the Court, it had always been convinced that the Court answered the needs of the countries which wanted to submit cases to it. He, therefore, agreed that the Statute of the Court should be the basis of the deliberations of the Committee.

Mr. Simpson (Liberia) said that in the opinion of his Government it was desirable to use the existing Statute as a basis for deliberations although the Statute should undergo certain modifications.

* Mr. Jorstad (Norway) said that he was in agreement with using the present Statute and that Norway too had often appeared before the Court and had always received fair treatment.

Mr. Novikov (Soviet Union) suggested that the Committee take the present Statute as the basis for its work on the ground that this would facilitate the work of the Committee and would enable it to prepare a Statute for consideration at San Francisco. He wished to stress, however, that he was speaking for himself only and that the view of his Government had not been officially defined.

M. Nisot (Belgium) recalled that none of the delegates were in a position to commit their Governments.

The Chairman said that they were all present as experts and that the task of the Committee was to agree upon recommendations for submission to the San Francisco Conference. That Conference might not accept the recommendations and

*[Corrigendum see p.61]

the governments there represented would be free to take whatever action they desired.

Sir Frederic Eggleston (Australia) said that his Government would not be bound at San Francisco to abide by any decisions reached at this meeting.

The Chairman agreed that the Committee could not bind the various governments represented.

Sr. Dihigo (Cuba) said that the Cuban project had been drafted by Dr. Bustamente, a judge of the Permanent Court of International Justice and a professor at the University of Habana. This project embodied the results of long years of experience with the Statute of the Court.

Mr. Read (Canada) stated that he was in complete agreement with the view that the existing Statute should be made the basis of the Committee's deliberations. He declared, however, that he was not quite clear whether the results of the Committee's discussions would be proposals for the amendment of the existing Statute or for a consolidated Statute. He hoped that the result would be a consolidated Statute. He was not certain, moreover, how it would be possible to get around the difficulty that the present Statute was regarded as incapable of amendment without the consent of all the signatories. He pointed out that some of these signatories were not represented at this meeting, notably the enemy States. Furthermore, some of the States that were represented at the meeting were not signatories to the Statute. He thought that the Committee might take up the present Statute and recommend revisions to be embodied in a new international agreement which would re-invigorate the Permanent Court. He hoped that it would be possible to provide for the functioning of the Court until the agreement of States not represented at the San Francisco meeting was secured. He thought it would be desirable to continue the Court and thus give legal and moral vigor to it.

The Chairman declared that the Dumbarton Oaks Proposals contemplated an International Court of Justice which should be an organ of the International Organization and that the Statute of the Court should be annexed to and be a part of the Charter of the new International Organization. The mission of the Committee was to prepare a Statute for submission to the San Francisco Conference and he suggested that the Statute of the Permanent Court would be a useful basis for the discussions of the Committee since it would expedite consideration of the problems involved. He felt that to draft a new Statute would be quite difficult in the time at the disposal of the Committee. If the Statute of the present Court were used as a model, it would be possible to make necessary changes. He asked whether it was the wish of the Committee to take the present Statute as the basis of discussion, making whatever changes were necessary or to try to draft a new Statute using the present Statute as a guide. He said that the work of the Committee was to consider the Statute of an International Court. Other questions such as the continuance of the Permanent Court of International Justice were not within the purview of the Committee since political questions were not of concern to this technical group.

Mr. Fitzmaurice (United Kingdom) said that of the two alternatives the United Kingdom preferred the continuance in force, with modifications, of the present Statute. The United Kingdom, however, believed that certain changes were necessary if the existing Statute were to form a worthy annex to the Charter of the United Nations. It considered the work of the Committee of great importance and believed that the Statute which might result from deliberations of the Committee would be as important in the juridical field as the Charter of the International Organization would be in the political field. He explained that the Government of the United Kingdom had considered the question of the juridical organization of such importance that it had sponsored the formation of the Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice. This Committee was composed of experts, many of whom were appointed by various European Governments having their headquarters in London. The discussions of this group of experts were in no way binding upon the Governments concerned, although the experts agreed to recommend them to their Governments. The unanimous recommendations reached represented the best views of a group well acquainted with the work of the Court and were therefore deserving of careful consideration. The report of the Inter-Allied Committee would be made available for distribution to the Jurists Committee. The United Kingdom found itself in general agreement with the report, though certain aspects of it might be affected by the conclusions reached at Dumbarton Oaks. Mr. Fitzmaurice did not think it would be satisfactory to take the existing Statute and make only such changes as would be necessary to relate the Court to the new International Organization instead of to the League. He thought that it might be desirable to make certain changes of substance, for it would be surprising if the Statute needed no alteration of substance after 20 years. Furthermore, there was the question of timing. If modifications of substance were desirable, the United Kingdom believed that the proper time to make them was now, or at least before the end of the San Francisco meeting and before the Statute was annexed to the Charter of the new Organization.

In this connection, he said he would like to call attention to the views of Sir Cecil Hurst who was well known to the group, at least by reputation. Writing in the Law Quarterly Review in 1943, Sir Cecil said that in 20 years the Statute of the Court had been subjected to considerable testing. The break in the life of the Court because of German occupation of The Hague afforded an opportunity for making changes which experience had shown to be necessary. If the Court is to be more important in the future, the opportunity of introducing changes at this time should not be missed. The United Kingdom Government believed that if action were not taken now or before the end of the San Francisco meeting, it would be difficult to introduce amendments perhaps for some years. The difficulty would be moral and political rather than legal. If the present opportunity of making changes of substance were not seized, it would be missed. Mr. Fitzmaurice thought it would not be enough to have an amendment clause. If the Statute were annexed to the Charter, it should represent the best that legal talent could devise, for the reason that it would be difficult to make revisions for some time thereafter. People would take the view that amendments should be made here or at San Francisco in order that a definitive Statute could be incorporated in the Charter of the Organization. If the work were not completed here, there should be no difficulty in completing it at San Francisco.

M. Nisot (Belgium) declared that he shared the view that the efficiency of the Court had been tested, and he thought that the Statute should be used as the basis of deliberation and that desirable amendments should be made. He pointed out, however, that caution should be exercised since the constitution of the world organization is not yet known. He insisted on the tentative and provisional character of any conclusions that might be reached by the Committee.

Minister de Oliveira (Brazil) agreed with this point of view.

Dr. Wang (China) declared that he supported the proposal to take the Statute of the present Court as the basis of discussion in order to facilitate the work.

M. Kernisan (Haiti) thought that it would be well to conserve the desirable features of the old Statute and take it as the basis for discussion in view of the shortness of the time.

Mr. Abbas. (Iraq) thought that there were many reasons for using the present Statute. The Court had worked well and for use of its Statute would facilitate the work of the Committee. Furthermore, he thought it was desirable to awaken strong support for judicial organization and that the use of the present Statute would give an impetus to the development of legal institutions. He thought there was psychological value in basing discussions on the present Statute.

The Chairman asked for a show of hands on the question whether the Committee should base its work on the existing Statute. There were no objections to this proposal.

The Chairman said that there was a further question to be considered in connection with the procedure of the Committee. It would be possible for the whole Committee to go over the Statute and make note of suggestions for revision, or it would be possible for the Committee to divide into two or more committees. Perhaps one committee could consider the first 33 articles of the Statute which dealt with the organization of the Court. The other might consider the jurisdiction and procedure of the Court and advisory opinions. He inquired the pleasure of the Committee as to its procedure in this regard.

Ambassador Cordova thought that it would be desirable for the whole Committee to review the Statute. He thought that it would be difficult to have two separate committees considering different parts of it since the decisions of one might not harmonize with the decisions of the other. He thought it would be better for the whole Committee to go over the Statute.

Dr. Lopez-Herrarte (Guatemala) agreed with the point of view of the Mexican delegate.

Dr. Abbass (Iraq) believed that the two committees might disagree. He thought it would be desirable for the whole Committee to go over the Statute and then to decide what points needed to be referred for further discussion.

The Chairman asked whether the Committee agreed that it would be preferable for the whole Committee to review the

Statute article by article before dividing into smaller committees. There was no opposition to this proposal.

The Chairman announced that the next session of the Committee would take place in the same room at 10 a.m. the following morning, April 10.

The meeting was adjourned at 4:55 p.m. In declaring the meeting adjourned, the Chairman said that he wished to thank the delegates for the spirit of cooperation which had been exhibited at the meeting.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 54(36)
G/42
April 16, 1945

CORRIGENDUM OF SUMMARY OF FIRST MEETING (REVISED)

Change paragraph 4, page 6 to read as follows:

"Mr. Jorsted said that he was in agreement with using the present Statute and that Norway too had appeared before the Permanent Court and was satisfied with the organization and working of that institution".

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 15
G/10
April 10, 1945

SUMMARY OF SECOND MEETING

Interdepartmental Auditorium, Conference Room B
Tuesday, April 10, 1945, 10:15 a.m.

The meeting was opened by the Chairman, Mr. Hackworth, who spoke of the desirability of completing the Committee's work before the opening of the San Francisco Conference, and raised in this connection the question of the hours during which the Conference would sit.

After a short discussion, it was decided that the Committee would meet from 10:00 to 1:00 in the morning and from 2:30 to 5:30 in the afternoon. The question was raised whether advisers to the delegate would be permitted to speak during the meetings. It was noted that some advisers were sitting in the absence of the delegate of his country. It was agreed that it would be proper for a delegate to designate an adviser to sit in his place during his absence and that this should be announced. It was also agreed that a delegate might authorize an adviser to speak.

The Chairman stated that the United States had prepared a revised Statute, which was distributed (U.S. Jur 1, G/1, April 2). The Chairman said that the French text would be supplied and explained that the draft was a suggestion to aid the Committee in its discussions.

Mr. Castro (El Salvador) suggested that short minutes of the meetings be made available. The Chairman said that it was hoped that such minutes could be distributed each morning covering the proceedings of the day before. The Chairman suggested that the Committee begin with Article 1 of the Statute and that when difficult questions were encountered they be referred to subcommittees.

Mr. Ramadan (Egypt), acknowledging that, according to the Dumbarton Oaks Proposals, the Statute is to be a part of the Organization, inquired whether it would not, nevertheless, be better to separate the two and thus to keep the Court free from political questions.

The Chairman, noting the connection between the two under the provisions of the Dumbarton Oaks Proposals, was of the opinion that the question thus raised was political and not to be decided in this Committee.

Mr. Garcia (Peru) thought that the question was important for the future of the Organization. While agreeing that it should be decided at San Francisco, he concurred in the view that the Court should be independent of the Organization in order that it be freed of political influence.

Mr. Ramadan expressed the belief that no decision could be made in the Committee--that its function is to make recommendations to the various governments. He thought that the Committee should not refrain from making recommendations on matters coming within its province.

Ambassador Cardova (Mexico) expressed the view that the San Francisco Conference was the proper body to decide the relationship between the Permanent Court and the Organization. The Mexican Government did not envisage a danger that the Court would be submitted to political considerations and felt that its independence would be assured by the terms of its Statute. He felt that recommendations by this Committee would have value.

Mr. Nisot (Belgium, Alternate) suggested that it would resolve any difficulty as to the power of this Committee if the Rapporteur would include in the final report a statement that all proposals were merely recommendations to the San Francisco Conference.

The Chairman observed that the Committee should not spend much more time discussing the question of the Court's relationship to the general Organization, and proposed that it be deferred until the end of the meeting of the Committee of Jurists, at which time the Committee might, if it wished, vote on a recommendation to be made to the San Francisco Conference.

Mr. Gavrilovic (Yugoslavia) expressed agreement with the Chairman, but added that in his view the International Court could not function properly other than as an organ of the general International Organization.

Mr. Basdevant (France) was willing to recognize that the Committee's views on this question could only be recommendations for San Francisco, and assented to postponement of further discussion. He thought it well, however, that the question had been brought up at this time, and wished to point out its importance. The Dumbarton Oaks Proposals call for a Court as the judicial organ of a general International Organization. There arise several questions concerning the connection of the two bodies. Should the judicial organ be attached to the political organ of the United Nations? This is a political problem, but it has juridical aspects which must be considered. One question is, whether the Statute of the Court should be annexed to the Charter of the political Organization, so that any State joining the latter would automatically become a member of the former. Another question is, whether States not members of the United Nations will be permitted to adhere to the Court. A juridical problem here grows out of the fact that some members of the United Nations have obligations under the Statute of the old Court toward States which are not among the United Nations and which, therefore, presumably will not be members of the political Organization.

Several points of contact have existed between the League of Nations and the Permanent Court of International Justice, and these must be taken into account. One such point of contact is the participation by the League's Council and Assembly in the election of judges for the Court. A second is found in the provisions for financing the Court through the League. A third is the provision in the Statute of the present Court which permits the Council and the Assembly to request advisory opinions of the Court. It must be decided whether these relationships shall be changed and, if so, what arrangements are to be substituted for them.

These are questions of political importance, but the Committee must consider them from a juridical standpoint. There is no objection to reserving them to the end of the meetings, but the Committee ought to keep them in mind.

Mr. Spiropoulos (Greece) considered that, so far as the Committee was concerned, the question had already been decided in the Dumbarton Oaks agreement, and that further policy decisions were for the San Francisco Conference.

The Chairman agreed, stating that it was the first duty of the Committee to draft a Statute, and that the Committee could make recommendations later if it desired. Mr. Hackworth had Article 1 of the United States Proposal distributed in English and French texts as follows:

STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE WITH PROPOSED REVISIONS

/The barred words are omitted, and the underscored words are added by the proposed revisions./

Article 1.

"~~A~~ The Permanent Court of International Justice ~~is hereby established, in accordance with Article 14 of the Covenant of the League of Nations,~~ established by the Protocol of Signature of December 16, 1920, and the Protocol for the Revision of the Statute of September 14, 1929, functioning under this Statute, shall be the principal judicial organ of The United Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

* * *

STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE AVEC LES REVISIONS PROPOSEES

/Les mots barrés sont supprimés et les mots soulignés sont ajoutés par les révisions proposées./

Article 1.

Indépendamment de la Cour d'arbitrage, organisée par les Conventions de La Haye de 1899 et 1907, et des Tribunaux spéciaux d'arbitres auxquels les Etats demeurent toujours libres de confier la solution de leurs différents, ~~conformément à l'article 14 du Pacte de la Société des Nations,~~ la Cour Permanente de Justice Internationale, établie par le Protocole de signature du 16 Décembre 1920, et le Protocole pour la révision du Statut du 14 Septembre 1929, sera pour répondre aux besoins des Nations Unies, l'organisme judiciaire principal des Nations Unies."

Mr. Jessup (United States, Adviser) stated that the French text of this Article should be changed so that the phrase "as adapted to the purposes of the United Nations" will correspond to "the chief judicial organ of the United Nations."

The Chairman invited discussion on Article 1.

Mr. Fitzmaurice (United Kingdom) suggested that the phrase "principal judicial organ of the United Nations", appearing in this Article should be deleted in this Article, since this provision should properly appear in the Charter of the United Nations.

For the same reason he suggested omitting Article 1 entirely. The second sentence of this Article he felt could be struck out as superfluous.

Mr. De Visscher (Belgium) and Mr. Escalante (Venezuela) indicated their agreement as to omitting the discussion of Article 1, and the Chairman, after referring the matter to the Committee, announced that this was generally agreed to, for the time being.

The Chairman went on to say that if the Permanent Court of International Justice is to be continued many Articles of its Statute will require no change. He suggested that the question of continuing the Court be discussed, noting at the same time that it was a political question for consideration at the San Francisco Conference.

Mr. Jorstad (Norway) thought it would be preferable to retain Article 1 in some form appropriate to the Dumbarton Oaks Proposals. Otherwise the numbering of the whole Statute would be confused.

The Chairman then called for discussion of Article 2.

Mr. Escalante proposed the following revision of Article 2 (distributed as document Jurist 7, April 10.):

"PROPOSED REVISION OF ARTICLE 2 OF THE STATUTE
OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE,
SUBMITTED BY THE REPRESENTATIVE OF VENEZUELA

Article 2. The Permanent Court of International Justice shall be composed of a body of independent judges elected on the exclusive basis of their technical qualifications and personal reputation.

* * *

REVISION DE L'ARTICLE 2 DU STATUT
DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE
PROPOSEE PAR LE REPRESENTATIVE DU VENEZUELA

Article 2. La Cour Permanente de Justice Internationate est un corps de magistrats indépendants, élus exclusivement en raison de leurs qualités techniques et de leur réputation personnelle."

The Chairman then called for discussion of Article 3.

Mr. Fitzmaurice stated that his Government wished to suggest the reduction of the number of judges in combination with certain proposals relating to nomination and election. He expressed the desire to have the best possible Court as a court and felt that there were inherent disadvantages in a large court. He pointed out that most high courts throughout the world sit in small chambers of from seven to nine members.

Mr. Wang (China) felt that the nominating procedure under the old Statute is rather complicated and favored the direct nomination of one candidate by each Government. Mr. Wang also thought that the election procedure should be simplified.

Ambassador Cordova was opposed to the nomination of non-national candidates, since, under this system some candidates were practically elected in advance by receiving concerted nominations by a number of States. He felt that the candidates should be on an equal footing.

The Mexican delegate also favored election of judges by the Assembly only.

Mr. Novikov (Soviet Union) indicated approval of direct nomination by Governments.

Mr. De Visscher inquired why the draft provided for election by the Assembly and Council "of The United Nations" rather than "the Organization of the United Nations". The Chairman explained that this phraseology involved an assumption and that changes would be made in accordance with decisions reached at San Francisco.

Mr. Basdevant declared that the existing method of making nominations had not proved inconvenient; in his view it should be retained. So far as election was concerned, he thought the simultaneous participation by both Assembly and Council was a safeguard which tended to assure wise selections and that it, too, should be continued.

Ambassador Mora (Chile) favored direct nomination by Governments. He thought that under the old system there had been some instances of dissatisfaction.

Mr. Spiropoulos stated that a distinction should be made between two questions under discussion. As to the method of election, he felt that the proposal to have only the Assembly participate in election of the judges raised a political question, and ought not to be considered. As to the method of nomination, he was in favor of direct nomination by Governments.

Dr. Escalante and Mr. Star-Busmann (Netherlands) declared themselves in favor of the direct system of nominations.

Ambassador Cordova suggested that the two questions, that as to nominations and that as to elections, be considered separately and voted upon accordingly.

Ambassador Mora wished to reply to the remark of the delegate from Greece that the method of election was a political question. If the Committee takes this attitude, he declared, it will not make much progress in its deliberations. Most of the articles of the Statute have their political aspects, but the Committee must give its opinion on them notwithstanding that fact. The Committee should decide now whether it will express its opinion on each part of the Statute, even though there may be political implications to the problem. If it does not decide to do so its report will be very incomplete.

Mr. Jorstad supported retention of the existing systems of nomination and election.

Mr. Simpson (Liberia) inquired whether the Council or the Assembly initiated the election under the language of Article 4, "the members of the Court shall be elected by the Assembly and by the Council".

The Chairman explained that under the present Statute the Council and Assembly voted simultaneously, independently of each other. The Chairman then stated that a number of the delegates appeared to be in favor of a system of direct nomination, and enumerated those who had so expressed themselves. (These included the delegates of Chile, China, Greece, Mexico, Netherlands, Union of Soviet Socialist Republics, United Kingdom, and Venezuela.) He proposed that these delegates should meet and frame a text to present to the Committee. On the question of the method of election, the Chairman regarded the Committee as bound by a provision in the Dumbarton Oaks Proposals calling for joint election by Council and Assembly. /This was an error which the Chairman noted in the afternoon session./ He suggested that if the Committee felt strongly that only the Assembly should participate in the election, it might put in brackets, in the final report, the words giving the Council a role in the election, and append a note explaining its action to the San Francisco conference.

Mr. Benes (Czechoslovakia) observed that, in considering whether to perpetuate the old system of election, the Committee should bear in mind that the Council and the Assembly were not related in the same way under the Dumbarton Oaks Proposals as under the League of Nations.

Ambassador Cordova said that he would submit in writing his proposal regarding elections. But he saw no reason why, if the Committee decided that the Assembly alone should elect, its conclusion should be placed in brackets in the report. The Rapporteur could of course record the vote.

Mr. Read (Canada) pointed out that if Article 1 were eliminated, the reference in Article 4 to the Permanent Court of Arbitration should probably be made more complete. He wished to inquire whether the question of the number of judges was to be discussed later, for he wished to make objections to decreasing the number.

Mr. Read also declared that his Government, and the Bench and Bar of Canada, were strongly in favor of retaining the existing method of nominating judges for the Court. (He referred to Recommendation 3 of a statement prepared by the Canadian Bar which he proposed to circulate.) It was their view that the present system enables a country to have a share in the nomination and election of the Court even though one of its own nationals is not chosen. Thus, under the existing system, Canada has taken pride in nominating several distinguished jurists of other countries who were elected to the Court, even though no Canadian has yet been on the Court.

The Chairman observed that the question of the number of judges had been left open pending the distribution of certain proposals.

With reference to a suggestion that the vote be taken on the method of nomination, Mr. Fitzmaurice suggested that this be deferred pending the distribution of his Government's proposal. He went on to explain briefly that under this proposal each Government would nominate one candidate and that all persons thus nominated would become members of the Court. The active judges of the Court would be elected from this body. This would permit a smaller Court since there would be a large and representative body of potential judges who would also be available to serve as ad hoc judges. This plan was intended to meet the dual problem of a small Court and of securing adequate representation.

The Chairman observed that the Government of the United States took the position along with the Government of Canada of retaining the present system of nominating judges. On the question of election, he observed that the Dumbarton Oaks Proposals called for continuing the system of the old Statute. He thought that if it was desired to change this method by eliminating the Council this could best be done in accordance with the Dumbarton Oaks mandate by including the word "Council" in brackets and including the views of the Committee in its report to be presented to the San Francisco Conference.

The Chairman then read the following letter received by him from the Carnegie Endowment for International Peace:

> "The Carnegie Endowment for International Peace has been greatly interested for many years in the Permanent Court of International Justice and has issued several publications on the subject and assisted in the issuance of others. In your capacity as a member of the United Nations Committee of Jurists to consider this subject, I have the honor to send you, with the compliments of the Endowment, the following publications:
>
> The Permanent Court of International Justice, by Judge Manley O. Hudson
> International Tribunals Past and Future, by Judge Manley O. Hudson
> Instruments relating to the Permanent Court of International Justice. International Conciliation pamphlet No. 388
> The International Court of the United Nations Organization. A Consensus of American and Canadian Views

Statement of Principles and Joint Action by
the Canadian Bar Association and the
American Bar Association
American Bar Association Journal for
April 1945

In sending these publications, please also accept my personal compliments.

(Signed) Geo. A. Finch, Director."

The meeting then adjourned.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 37(15)
G/27
April 13, 1945

SUMMARY OF SECOND MEETING
(Revised)

Interdepartmental Auditorium, Conference Room B.
Tuesday, April 10, 1945, 10:15 a.m.

The meeting was opened by the Chairman, Mr. Hackworth, who spoke of the desirability of completing the Committee's work before the opening of the San Francisco Conference, and raised in this connection the question of the hours during which the Conference would sit.

After a short discussion, it was decided that the Committee would meet from 10:00 to 1:00 in the morning and from 2:30 to 5:30 in the afternoon. The question was raised whether advisers to the representatives would be permitted to speak during the meetings. It was noted that some advisers were sitting in the absence of the representatives of their countries. It was agreed that it would be proper for a representative to designate an adviser to sit in his place during his absence and that this should be notified to the Secretariat in each case. It was also agreed that a representative might authorize an adviser to speak.

The Chairman stated that the United States had prepared a revised Statute, which was distributed (U.S. Jur 1, G/1, April 2). The Chairman said that the French text would be supplied and explained that the draft was a suggestion to aid the Committee in its discussions.

Ambassador Castro (El Salvador) suggested that short minutes of the meetings be made available. The Chairman said that it was hoped that a summary could be distributed each morning covering the proceedings of the day before. The Chairman suggested that the Committee begin with Article 1 of the Statute and that when difficult questions were encountered they be referred to subcommittees.

Mr. Ramadan Pacha (Egypt), acknowledging that, according to the Dumbarton Oaks Proposals, the Court is to be a part of the Organization, inquired whether it would not, nevertheless, be better to separate the two and thus to keep the Court free from political questions.

The Chairman, noting the connection between the two institutions under the provisions of the Dumbarton Oaks Proposals, was of the opinion that the question thus raised was political in matter and therefore not to be decided in this Committee.

Mr. Garcia (Peru) thought that the question was important for the future of the organization. While agreeing that it should be decided at San Francisco, he concurred in the view that the Court should be independent of the organization in order that it be freed of political influence.

Mr. Ramadan Pacha (Egypt) expressed the belief that no decision could be made in the Committee--that its function is to make recommendations to the various governments. He thought that the Committee should not refrain from making recommendations on matters coming within its province.

Ambassador Cordova (Mexico) expressed the view that the San Francisco Conference was the proper body to decide the relationship between the Permanent Court and the organization. The Mexican Government did not envisage a danger that the Court would be submitted to political considerations and felt that its independence would be assured by the terms of its Statute. He felt that recommendations by this Committee would have value.

Mr. Nisot (Belgium) suggested that it would resolve any difficulty as to the power of this Committee if the Rapporteur would include in the final report a statement that all proposals were merely recommendations of a conditional and provisional character to the San Francisco Conference.

The Chairman observed that the Committee should not spend much more time discussing the question of the Court's relationship to the general organization, and proposed that it be deferred until the end of the meeting of the Committee of Jurists, at which time the Committee might, if it wished, vote on a recommendation to be made to the San Francisco Conference.

Mr. Gavrilovic (Yugoslavia) expressed agreement with the Chairman, but added that in his view the International Court could not function properly other than as an organ of the general international organization.

Mr. Basdevant (France) was willing to recognize that the Committee's views on this question could only be recommendations for San Francisco, and assented to postponement of further discussion. He thought it well, however, that the question had been brought up at this time, and wished to point out its importance. The Dumbarton Oaks Proposals call for a Court as the judicial organ of a general international organization. There arise several questions concerning the connection of the two bodies. Should the judicial organ be attached to the political organ of the United Nations? This is a political problem, but it has juridical aspects which must be considered. One question is whether the Statute of the Court should be annexed to the Charter of the political organization, so that any State joining the latter would automatically become a member of the former. Another question is whether States not members of the United Nations will be permitted to adhere to the Court. A juridical problem here grows out of the fact that some members of the United Nations have obligations under the Statute of the old Court toward States which are not among the United Nations and which, therefore, presumably will not be members of the political organization.

Several points of contact have existed between the League of Nations and the Permanent Court of International Justice, and these must be taken into account. One such point of contact is the participation by the League's Council and Assembly in the election of judges of the Court. A second is found in the provisions for financing the Court through the League. A third is the provision in the Statute of the present Court which permits the Council and the Assembly to request advisory opinions of the Court. It must be decided whether these relationships shall be changed and, if so, what arrangements are to be substituted for them.

These are questions of political importance, but the Committee must consider them from a juridical standpoint. There is no objection to reserving them to the end of the meetings, but the Committee ought to keep them in mind.

Mr. Spiropoulos (Greece) considered that, so far as the Committee was concerned, the question had already been decided in the Dumbarton Oaks agreement, and that further policy decisions were for the San Francisco Conference.

The Chairman agreed, stating that it was the first duty of the Committee to draft a Statute, and that the Committee could make recommendations later if it desired.

The Chairman had Article 1 of the United States Proposal distributed in English and French texts as follows:

[The barred words are omitted, and the underscored words are added by the proposed revisions.]

Article 1.

"~~A~~ The Permanent Court of International Justice ~~is hereby established, in accordance with Article 14 of the Covenant of the League of Nations,~~ established by the Protocol of Signature of December 16, 1920, and the Protocol for the Revision of the Statute of September 14, 1929, functioning under this Statute, shall be the principal judicial organ of The United Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

* * *

[Les mots barrés sont supprimés et les mots soulignés sont ajoutés par les révisions proposées.]

Article 1.

Indépendamment de la Cour d' arbitrage, organisée par les Conventions de La Haye de 1899 et 1907, et des Tribunaux spéciaux d'arbitres auxquels les Etats demeurent toujours libres de confier la solution de leurs différents, ~~conformément à l'article 14 du Pacte de la Société des Nations~~, la Cour Permanente de Justice Internationale, établie par le Protocole de signature du 16 Décembre 1920, et le Protocole pour la révision du Statut du 14 Septembre 1929, sera pour répondre aux besoins des Nations Unies, l'organisme judiciaire principal des Nations Unies."

Mr. Jessup (United States) stated that the French text of this Article should be changed so that the phrase "pour répondu aux besoins des Nations Unies" ("as adapted to the purposes of the United Nations") would correspond to the English text, "functioning under this Statute".

The Chairman invited discussion on Article 1.

Mr. Fitzmaurice (United Kingdom) suggested that the phrase "principal judicial organ of the United Nations", appearing in this article should be deleted here, since this provision should properly appear in the Charter of the United Nations.

For the same reason he suggested omitting Article 1 entirely. The second sentence of this article he felt could be struck out as superfluous.

Mr. Nisot (Belgium) and Dr. Escalante (Venezuela) indicated their agreement as to postponing the discussion of Article 1, and the Chairman, after referring the matter to the Committee, announced that this was generally agreed to, for the time being.

The Chairman went on to say that if the Permanent Court of International Justice is to be continued many articles of its Statute will require no change. He suggested that the question of continuing the Court be discussed, noting at the same time that it was a political question for consideration at the San Francisco Conference.

*Mr. Jorstad (Norway) thought it would be preferable to retain Article 1 in some form appropriate to the Dumbarton Oaks Proposals. Otherwise the numbering of the whole Statute would be confused.

The Chairman then called for discussion of Article 2.

Dr. Escalante (Venezuela) proposed the following revision of Article 2 (distributed as document Jurist 7, April 10.):

> "Article 2. The Permanent Court of International Justice shall be composed of a body of independent judges elected on the exclusive basis of their technical qualifications and personal reputation.

*⌊Corrigendum see p.80⌉

* * *

Article 2. La Cour Permanente de Justice Internationate est un corps de magistrats indépendants, élus exclusivement en raison de leurs qualités techniques et de leur réputation personnelle."

The Chairman then called for discussion of Article 3.

Mr. Fitzmaurice (United Kingdom) stated that his Government wished to suggest the reduction of the number of judges in combination with certain proposals relating to nomination and election. He expressed the desire to have the best possible Court as a court and felt that there were inherent disadvantages in a large court. He pointed out that most high courts throughout the world sit in small chambers of from seven to nine members.

Dr. Wang (China) felt that the nominating procedure under the old Statute is rather complicated and favored the direct nomination of one candidate by each government. Dr. Wang also thought that the election procedure should be simplified.

Ambassador Cordova (Mexico) was opposed to the nomination of non-national candidates, since under this system some candidates were practically elected in advance by receiving concerted nominations by a number of States. He felt that the candidates should be on an equal footing. The Mexican representative also favored election of judges by the Assembly only.

Mr. Novikov (Soviet Union) indicated approval of direct nomination by governments.

Mr. Basdevant (France) declared that the existing method of making nominations had not proved inconvenient; in his view it should be retained. So far as election was concerned, he thought the simultaneous participation by both Assembly and Council was a safeguard which tended to assure wise selections and that it, too, should be continued.

Ambassador Mora (Chile) favored direct nomination by governments. He thought that under the old system there had been some instances of dissatisfaction.

Mr. Spiropoulos (Greece) stated that a distinction should be made between two questions under discussion. As to the method of election, he felt that the proposal to have only the Assembly participate in election of the judges raised a political question, and ought not to be considered. As to the method of nomination, he was in favor of direct nomination by governments.

Dr. Escalante (Venezuela) and Mr. Star-Busmann (Netherlands) declared themselves in favor of the direct system of nominations.

Ambassador Cordova (Mexico) suggested that the two questions, that as to nominations and that as to elections, be considered separately and voted upon accordingly.

Ambassador Mora (Chile) wished to reply to the remark of the representative from Greece that the method of election was a political question. If the Committee takes this attitude, he declared, it will not make much progress in its deliberations. Most of the articles of the Statute have their political aspects, but the Committee must give its opinion on them notwithstanding that fact. The Committee should decide now whether it will express its opinion on each part of the Statute, even though there may be political implications to the problem. If it does not decide to do so its report will be very incomplete.

Mr. Jorstad (Norway) supported retention of the existing systems of nomination and election.

Mr. Simpson (Liberia) inquired whether the Council or the Assembly initiated the election under the language of Article 4, "the members of the Court shall be elected by the Assembly and by the Council".

The Chairman explained that under the present Statute the Council and Assembly voted simultaneously, independently of each other. The Chairman then stated that a number of the representatives appeared to be in favor of a system of direct nomination, and enumerated those who had so expressed themselves. (These included the representatives of Chile, China, Greece, Mexico, Netherlands, Union of Soviet Socialist Republics, United Kingdom, and Venezuela.) He proposed that these representatives should meet and frame a text to present to the Committee. On the question of the method of election, the Chairman regarded the Committee as bound by the provisions of the Dumbarton Oaks Proposals.

Mr. Benes (Czechoslovakia) observed that, in considering whether to perpetuate the old system of election, the Committee should bear in mind that the Council and the Assembly were not related in the same way under the Dumbarton Oaks Proposals as under the League of Nations.

Ambassador Cordova (Mexico) said that he would submit in writing his proposal regarding elections.

Mr. Read (Canada) pointed out that if Article 1 were eliminated, the reference in Article 4 to the Permanent Court of Arbitration should probably be made more complete. He wished to inquire whether the question of the number of judges was to be discussed later, for he wished to make objections to decreasing the number.

Mr. Read also declared that his Government, and the Bench and Bar of Canada, were strongly in favor of retaining the existing method of nominating judges for the Court. (He referred to Recommendation 3 of a statement prepared by the Canadian Bar which he proposed to circulate.) It was their view that the present system enables a country to have a share in the nomination and election of the Court even though one of its own nationals is not chosen. Thus, under the existing system, Canada has taken pride in nominating several distinguished jurists of other countries who were elected to the Court, even though no Canadian has yet been on the Court.

The Chairman observed that the question of the number of judges had been left open pending the distribution of certain proposals.

With reference to a suggestion that the vote be taken on the method of nomination, Mr. Fitzmaurice suggested that this be deferred pending the distribution of his Government's proposal. He went on to explain briefly that under this proposal each government would nominate one candidate and that all persons thus nominated would become members of the Court. The active judges of the Court would be elected from this body. This would permit a smaller Court since there would be a large and representative body of potential judges who would also be available to serve as ad hoc judges. This plan was intended to meet the dual problem of a small Court and of securing adequate representation.

The Chairman observed that the Government of the United States took the position along with the Government of Canada of retaining the present system of nominating judges.

The Chairman then read the following letter received by him from the Carnegie Endowment for International Peace:

> "The Carnegie Endowment for International Peace has been greatly interested for many years in the Permanent Court of International Justice and has issued several publications on the subject and assisted in the issuance of others. In your capacity as a member of the United Nations Committee of Jurists to consider this subject, I have the honor to send you, with the compliments of the Endowment, the following publications:
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> The International Court of the United Nations Organization. A Consensus of American and Canadian Views
> Statement of Principles and Joint Action by the Canadian Bar Association and the American Bar Association
> American Bar Association Journal for April 1945
>
> In sending these publications, please also accept my personal compliments.
>
> (Signed) Geo. A. Finch, Director."

The meeting then adjourned.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington. D. C.

RESTRICTED
Jurist 53(37)
G/41
April 16, 1945

CORRIGENDUM OF SUMMARY OF SECOND MEETING (Revised)

Delete the second sentence of paragraph 7, page 5 and insert a sentence as follows:

> "Otherwise the numbering of the whole Statute had to be altered".

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D.C.

RESTRICTED
Jurist 19
G/14
April 10, 1945

SUMMARY OF THIRD MEETING

Interdepartmental Auditorium, Conference Room B
Tuesday, April 10, 1945, 2:30 p.m.

Mr. Hackworth, Chairman, opened the meeting by inviting Mr. Basdevant (France), Rapporteur, to be seated near the Chairman as is usual with rapporteurs.

Mr. Basdevant observed that he had understood at the morning meeting that the Committee was to return to the points on which there was agreement and was to put in brackets those points regarding which there was a difference of opinion from the proposals made at Dumberton Oaks. He inquired whether this was the view of the Committee.

Mr. Hackworth observed that that was his understanding also. He said that it would be desirable that the Committee should agree on as many matters as possible. He pointed out that Mr. Basdevant, as the Rapporteur, would have to point out differences in view of his report.

Mr. Hackworth then proceeded with the discussion of the Statute of the Court. He recalled that Article 1 was held in abeyance but expressed the view that this Article would probably have to be considered in order to prevent changes in some other Articles. He proposed a small subcommittee to consider Article 1 (U.S. Jur.1). He suggested that the subcommittee should consist of the delegates of Cuba, New Zealand, and the Union of Soviet Socialist Republics. He observed that the last-mentioned delegate might desire to have one of his advisers sit on the subcommittee.

Mr. Hackworth then stated that the Committee was ready to consider Articles 5 to 14 of the Statute of the Court (U. S. Jur.1). These Articles should be considered together because they are all tied in with the election of judges. The Committee's decision in relation to Article 4 would influence the Committee's judgment as to the other Articles. He asked the Solicitor General of the United States, Mr. Charles Fahy, his adviser, to read Articles 5 to 14 from the draft of the Statute of the Permanent Court of International Justice numbered U. S.

Jur. 1. Mr. Fahy read Article 5, concerning nomination of judges. He then pointed out that if Article 4 should be changed so as to have election of judges by governments the word "government" would have to be substituted for "members of the national groups".

Mr. Fahy then read Article 6, relating to nominees, Article 7 as to lists of nominees, and Article 8 as to election of judges by the Assembly and the Council. He pointed out that the last-mentioned Article contemplates a majority of the Assembly as well as a majority of the Council separately.

Mr. Fahy then read Article 9 as to qualifications of judges and Article 10 as to method of election. He pointed out that the required majority is a majority of the two bodies and not of the aggregate number of their members.

Mr. Fahy then read Articles 11 to 14. Articles 11 and 12 related to vacancies on the Court, Article 13 to the term of members of the Court, and Article 14 to vacancies.

Mr. Hackworth wanted to correct a statement which he had made at the morning meeting to the effect that the Dumbarton Oaks Proposals required action by the Assembly as well as by the Council with respect to election of judges. The Dumbarton Oaks Proposals did not contain such a provision. This provision is found in the Statute of the Court.

Ambassador Cordova (Mexico) suggested that since all these articles relate to the same subject, i.e., the election of judges, they should all be referred to the same subcommittee. Mr. Hackworth inquired whether there was any objection to the proposal of the Mexican delegate. There being no objection, the articles were referred to the subcommittee.

Mr. Fitzmaurice (United Kingdom) called attention to Article 13 which provides that the members of the Court shall be elected for nine years and that they may be re-elected. He pointed out that under the present system it is possible that the terms of all the judges may expire at the same time and that in such a case there would be a practical break in the continuity of the Court since all the Judges would be new. He thought that there should be a provision for the election of judges for nine years but that with respect to the first election, three judges should be elected for three years, three others for six years, and the other three for nine years. He stated that this proposal was based on the assumption that there would be only nine judges. If the number of judges was to be changed, other changes would have to be made accordingly.

Ambassador Mora (Chile) said that regardless of the number of judges there should be three groups elected at different times.

Dr. Wang (China) agreed with the proposal of the delegate of the United Kingdom. He said that his experience in the Court made him believe that nine new judges, or a majority of new judges, would break the Court's continuity. For the initial period, he was of the opinion that the judges should be elected in groups.

Ambassador Cordova agreed with the delegate of the United Kingdom, but proposed that all judges be elected for nine years and that the groups which should be retired after the expiration of three and six years respectively, be chosen by lot.

Mr. Hackworth said that he had received a suggestion that the delegates of Canada, France, and Norway be added to the subcommittee. There being no objection, he appointed them on the subcommittee.

Ambassador Cordova suggested that Mr. Fitzmaurice draft a text of Article 13 to give effect to the latter's suggestions. Mr. Fitzmaurice agreed to do so.

Dr. Escalante (Venezuela) submitted a document for revision of Articles 4 to 14, and suggested that the revision be referred to the subcommittee.

Mr. Hackworth stated that if there was no objection this action would be taken. There was no objection. Mr. Hackworth then proceeded to a discussion of Article 14, relating to vacancies, which he read. He pointed out that if the Dumbarton Oaks Proposals were approved by the San Francisco Conference the Security Council would be in continuous session and, therefore, the provision in Article 14 regarding the fixing of the date of elections at the next session of the Council would have to be changed. However, this was a question of drafting and was held in abeyance for the time being.

Mr. Hackworth then took up Article 15 and pointed out that it was changed entirely, the proposed text providing for expiration of the term of a member of the Court upon his attaining the age of 75 years, and for ineligibility of election of persons over 72.

Dr. Abbass (Iraq) stated that in the dynamic civilization in which we live he would propose an age limit of 70 years, and the Rt. Hon. Dr. Evatt (Australia) agreed with him.

Mr. Fitzmaurice stated that his Government was opposed to any age limit. In the legal field the older the judge the better. Any age limit might exclude very desirable candidates.

Sir Michael Myers (New Zealand) agreed with the delegate of the United Kingdom. Judges appointed for life may be required to retire when they attain a certain age limit, but since the judges of the Court are to be elected for nine years the electors would be free not to elect them if they believe that during the term of office the judges would reach an age of decrepitude. He preferred the original article.

Mr. Fitzmaurice stated that if the system of rotation was adopted it would be desirable to preserve the present article.

Mr. Hackworth stated that, under the rotation proposal of the delegate of the United Kingdom, Article 15 might be retained in its present form. He proposed that Article 15 be held in abeyance unless the Committee desired to retain it in its present form. He stated that he had no particular brief for the new article. He simply had in mind that people who are unable to take part in the activity of the Court should not be elected to membership.

Dr. Escalante agreed with the proposed Article 15. M. Basdevant stated that since he is probably the senior member of the Committee he would not make any proposals concerning the provision as to age limit.

Ambassador Mora thought that the question as to the filling of vacancies should be considered by the subcommittee.

Mr. Hackworth pointed out that if Article 15 is retained in its present form, the question of vacancies would be taken care of. He asked the Committee to vote on the question whether the article should be retained in that form. Twenty members voted for such retention, and it was decided that there would be no change.

Mr. Hackworth observed that the next question related to age limit. He asked the Committee whether it was ready to vote.

Dr. Escalante moved and Dr. Abbass seconded that there should be an age limit.

Mr. Fitzmaurice stated that he would like to observe that there was no need for an age limit and that there are sufficient safeguards with respect to this matter. Under the present Statute, judges are elected for nine years and they go out of office at the end of that period. Furthermore, this matter can be handled by the electors. If they believe that, because of age, a man should not be elected, the electors may, of course, refrain from appointing him on the Court.

Dr. Abbass pointed out that there are many able persons over 70 years of age, but that there are also such persons under that age. He favored an age limit.

Mr. Simpson (Liberia) was against an age limit.

Mr. Ramadan (Egypt) stated that there is an analogy between the Court and certain other institutions. He expressed the view that there was no need for such limitation, and saw no advantage in having it, especially if the proposal of a renewal of the judges every three years is to be adopted.

Mr. Hackworth called for a vote. Twenty members voted against an age limit and ten in favor. The motion was lost.

Mr. Hackworth stated that it had been suggested to him by the delegates of Egypt, Iran, Iraq, Saudi Arabia, and Syria that one of them be appointed on the subcommittee on elections. They proposed the Egyptian delegate, and, there being no objection, he was appointed on the subcommittee.

Mr. Hackworth then took up Article 16, which prohibits members of the Court from engaging in any other occupation of a professional nature.

Mr. Fitzmaurice stated that he would like to circulate a proposal to distinguish between members of the Court and judges. He expressed the view that the former should not be prohibited from engaging in other occupations of a professional nature, but that he would like to hold this article in abeyance. Mr. Hackworth stated that if there was no objection, the article would be held in abeyance. He then took up Article 17, which prohibits a member of the Court from participating in the decision of any case with which he might have previously been connected as agent or counsel. He read the article and inquired whether there was any objection thereto.

Dr. Abbass agreed with the provisions of Article 17 except with respect to the provision which prohibits participation in the decision of a case by a member of the Court who had previously taken part as a member of a commission of inquiry. He thought that a member of such commission gained experience which might be useful and saw no reason for barring him.

Mr. Simpson proposed the elimination of the words "an active" in the second line of the second paragraph of Article 17. He was of the opinion that a member need not have taken "an active" part to be barred and that if he has taken any part as agent or counsel he should be ineligible to participate in the decision of a case.

Mr. Basdevant stated that the remarks of the Liberian delegate related to the English text and that the French text did not contain the words "an active".

Mr. Hackworth pointed out that both texts are official and suggested that the words "an active" be eliminated, especially since they are not in the French text.

Mr. Ramadan said that the French text states that even a simple "intervention" is a bar. It would be desirable to find an equivalent word in English to take care of those cases in which there is "intervention".

Mr. Star-Busmann (Netherlands) thought that the question was important since Article 17 provides that any question of doubt may be resolved by the Court.

Mr. Hackworth saw no objection to the elimination of the two words, "an active". He put the question to a vote. Twenty-seven voted in favor of elimination. There were no dissenting votes. It was decided to eliminate the words.

Mr. Hackworth then took up Article 18, which provides for the dismissal of a member of the Court in case of inability to fulfill the required conditions. He read this article and asked if there were any comments.

The Rt. Hon. Dr. Evatt pointed out that Article 18 was in the negative form and that it raised a question of drafting.

Mr. Hackworth replied that since it had been in effect 25 years it should be approved unless there was an objection. There was no objection.

Mr. Hackworth then took up Article 19, which grants diplomatic immunities to members of the Court.

Mr. Fitzmaurice stated that since there was a correspondence between the old article and a similar article in the Covenant of the League of Nations there should be a correspondence between this provision and whatever analogous provision might be included in the initial Charter.

Mr. Hackworth thought that there should be immunity regardless of the nature of the provisions in the Charter. He thought that Article 19 should be approved.

Mr. Fitzmaurice stated that he agreed in principle and that the article might be passed for the time being.

Mr. Hackworth then read Article 20 regarding oaths of office by members of the Court. He stated that if there was no objection the article should be approved. There being no objection, the article was approved. He then read Article 21 which provides for the election by the Court of a President, a Vice-President and a Registrar. The article provides also that the duties of the Registrar of the Court shall not be deemed incompatible with those of the Secretary-General of the Permanent Court of Arbitration.

Mr. Fitzmaurice stated that it was not clear why the provision as to incompatibility was included in this article. Mr. Jorstad (Norway) pointed out that, in practice, the two offices have never been held by the same person.

Mr. Basdevant thought that the Secretary of the Court had limited activities and so he was able to be also a Registrat of the Court. However, if the Court had a great deal of work there would have to be a Registrar as well as a Secretary-General. Up to now there was no Reporter. There was, however, an Assistant Reporter. He was of the opinion that Article 21 might perhaps be changed to read that the Court might appoint a Registrar, and, if necessary, a Secretary-General.

Dr. Gavrilovic (Yugoslavia) agreed with the French delegate. He said that the Registrar assisted the Court and, in addition, was in charge of administrative matters such as the appointment of personnel and the like. Probably there should be a Registrar to assist the Court and a Secretary-General to have administrative functions.

Mr. Fitzmaurice had no strong views as to this matter. However, he made a motion along the lines suggested by the French delegate.

Mr. Nisot (Belgium) saw no reason for retention of the provision of Article 21 as to incompatibility since it was not shown that this provision was necessary. Mr. Gavrilovic agreed with the Belgian representative and moved that the last paragraph of Article 21, which contains this provision, be eliminated. Mr. Hackworth put the question to a vote. Eighteen voted for elimination and seven against it. It was, therefore, decided that this provision be eliminated. Mr. Hackworth called attention to the fact that some of the delegates did not vote. He stated that if the Committee wanted to reopen the question he would entertain such a motion. Dr. De Bayle (Costa Rica) inquired whether the omission of the provision concerning incompatibility from Article 21 would result in making the holding of the two offices of Registrar and Secretary-General by the same person permissible. He stated that if this provision is eliminated the Court could appoint anyone it chose, including the Secretary-General of the Permanent Court of Arbitration. Dr. Gavrilovic called attention to the fact that the Permanent Court of International Justice and the Court of Arbitration are run by the same governments. He expressed the view that the Registrar should not be charged with additional duties. Dr. De Bayle expressed the view that elimination would not solve the question. He raised the question whether elimination would make the holding of the two offices incompatible. Sr. Castro (El Salvador) said that elimination would carry an implication that the Secretary of the Permanent Court of Arbitration may be also a Registrar of the Permanent Court.

Mr. Hackworth pointed out that the Committee had agreed to eliminate the provision regarding incompatibility and that the French delegate had suggested the appointment of another officer of the Court to take care of the possibility that the work of the Court might be increased.

Mr. Hackworth said that the Court might appoint a Secretary-General if it found it desirable.

Mr. Basdevant moved that there should be a provision authorizing the Court to appoint such other officers as it might need. The motion was seconded. Mr. Jessup (United States, Adviser) stated that under its rules the Court was able to operate effectively so far and that there was no need for the proposed amendment. Mr. Hackworth observed that, as Mr. Jessup stated, there was a rule regarding this matter. The Rt. Hon. Dr. Evatt expressed the view that the Court had no power to appoint officers and that to do so might be *ultra vires*. He thought, therefore, that there might be reason for the suggested amendment. Dr. Wang expressed the view that the Court had no power to create positions by rules of procedure. Mr. Star-Busmann agreed with the Chinese delegate. Mr. Nisot inquired whether this suggestion would not result in requiring the appointment of all officials by the Court instead of by the Registrar, as is the case now.

Ambassador Mora stated that if such a provision is introduced the Committee would be entering into the regulatory field, a thing which in his opinion should not be done. He thought that that field should be left to the appointing power of the Court. Mr. Gori agreed with the greater part of the remarks of the Chilean delegate. He thought that the draftsman of this article must have had some purpose in mind and that the provision as to incompatibility should not be eliminated.

Mr. Hackworth called attention to the fact that the Committee had already voted to eliminate that provision.

The Rt. Hon. Dr. Evatt stated that the provision authorizing the Court to appoint an officer did not necessarily imply that it could appoint other officers.

Mr. Hackworth stated that the motion was to add at the end of the second paragraph of Article 21 the words "and such other officers as may be necessary". Mr. Spiropoulos (Greece) wanted to make some general observations. The Statute of the Court has been in force for about 25 years. The Committee wants now to change some provisions. He expressed the view that the Committee should leave the Statute as is, unless it is absolutely necessary to make changes. He thought that there should not be any changes in regard to this matter, especially since the members of the Committee were not the judges of the Court and did not know the pertinent details. Mr. Nisot agreed with the Greek delegate that, as the Court functioned perfectly for 25 years, there should not be any changes. Mr. Fitzmaurice expressed the view that the omission as to the appointment of other officials must have been an oversight and that since the Committee has an opportunity to remedy such omissions it should do so.

Mr. Star-Busmann agreed with the delegate of the United Kingdom. Mr. Hackworth pointed out that in the United States administrative officials take action and in some cases go back to Congress for legislation authorizing them to take such action. These officials merely want to put it beyond any reasonable doubt that they have authority to act as they do. This is the situation here. It would do no harm to have such a provision. Mr. Hackworth put the question to a vote. Twenty-one delegates voted in favor of it and one delegate opposed it.

Mr. Hackworth then took up Article 22 which provides that the seat of the Court shall be at The Hague. He called attention to the fact that the question as to where the seat of the

Court should be is a question that could be left for the San Francisco Conference. However, if the Committee had any observations, they could be embodied in the report. This was not his personal view. Dr. Escalante stated that the Venezuelan delegation agreed that the seat should be at The Hague but added that there should be a provision that the Court could meet, if necessary, in other places. He expressed the hope that other delegates would comment in regard to this matter.

Mr. Star-Busmann stated that the seat of the Court is part of the "functioning" of the Court. He thought that this question should be decided here. Mr. Hackworth pointed out that the question as to where the seat should be may come up at the San Francisco Conference, or it may not.

Mr. Spiropoulos thought that the question was not a political one, but believed that the questions to be referred to the San Francisco Conference need not be only political ones. He thought that questions of this character might be so referred and that this question should be decided by the San Francisco Conference.

Mr. Nisot thought that the question regarding the seat of the Court should be decided here and that the seat should be at The Hague. Mr. Jorstad stated that the seat should be at The Hague and called attention to the convenient location of that place as well as to the fact that the Netherlands Government had been kind to the Court. Mr. Basdevant thought that the Committee should make the recommendation as it was agreed at the morning meeting. It is true that the question might be left for decision by the San Francisco Conference, but he thought that the members of the Committee as jurists might take account of certain considerations. The prestige of the Permanent Court is associated with The Hague. He thought that the Committee should tell the San Francisco Conference that the seat should be at The Hague. He wondered, however, if something more should not be added to Article 22. He thought that the Court should be able to sit anywhere in the world, when necessary. He expressed the view that the Statute should contain such a provision.

Dr. Garcia (Peru) stated that the Peruvian delegation would vote for the article as it stands

Mr. Fahy (United States, Adviser) stated that he would like to make a suggestion that the Court should be able, in its discretion, to sit in other places than The Hague.

Mr. Hackworth stated that if there was no objection he would assume that there was no objection to the article as it stands. However, he pointed out that there had been suggestions to the effect that the Court should be able to hold sessions elsewhere than at The Hague. He called attention to the provisions of Article 28 under which chambers of the Court may sit elsewhere than at The Hague. Mr. El-Fakih (Saudi Arabia) proposed that the Court should have power to sit at The Hague or anywhere else, if necessary. Mr. Fitzmaurice called attention to the fact that Judge Manley O. Hudson expressed the view in his book on the Permanent Court of International Justice that the Court may sit elsewhere if it so desires and that there can be no doubt of the power of the Court to do so. Judge Hudson is of the opinion, Mr. Fitzmaurice said, that Articles 44 and 50 of the Statute show that the Court is not bound to The Hague in its activities. Ambassador Cordova expressed the view that it would clarify the situation if the Court was given power to sit elsewhere.

Mr. Star-Busmann stated that the question of the seat of the Court might be confused with the question whether the Court might sit elsewhere than at The Hague from time to time. Mr. Spiropoulos said that there was no difference between the two questions. He did not agree with the Canadian delegate that the Court should be able to sit elsewhere. He thought that the Committee should choose The Hague as the seat of the Court and that after such choice the Court could not sit in any other place. He stated that Article 28 did not relate to the Court, but to chambers thereof. He expressed the view that the Court should sit at The Hague and that the question may be left open for decision by the San Francisco Conference. Mr. Benes (Czechoslovakia) stated that the Court should sit at The Hague or in any other place, if necessary. Mr. Castro proposed the addition of the following words at the end of the first paragraph of Article 22: "This, however, will not prevent the Court from sitting elsewhere if circumstances require."

Mr. Hackworth called attention to the fact that the hour of adjournment had arrived and that the proposal of the Salvadoran delegate might be discussed on the following day.

The third meeting was adjourned at 5:30 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 38 (19)
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April 13, 1945

SUMMARY OF THIRD MEETING
(Revised)
Interdepartmental Auditorium, Conference Room B.
Tuesday, April 10, 1945, 2:30 p.m.

Mr. Hackworth, Chairman, opened the meeting. He invited Mr. Basdevant (France), Rapporteur, to be seated next to the Chairman.

Mr. Basdevant (France) observed that he had understood at the morning meeting that the Committee was to return to the points on which there was agreement and was to put in brackets those points regarding which there was a difference of opinion from the proposals made at Dumbarton Oaks. He inquired whether this was the view of the Committee.

The Chairman observed that that was his understanding also. He said that it would be desirable that the Committee should agree on as many matters as possible. He pointed out that Mr. Basdevant, as the Rapporteur, would have to point out differences of view in his report.

The Chairman then proceeded with the discussion of the Statute of the Court. He recalled that Article 1 was held in abeyance but expressed the view that this Article would probably have to be considered in order to prevent changes in some other Articles. He proposed a small subcommittee to consider Article 1. He suggested that the subcommittee should consist of the representatives of Cuba, New Zealand, and the Union of Soviet Socialist Republics.

The Chairman then stated that the Committee was ready to consider Articles 5 to 14 of the Statute of the Court. These Articles should be considered together because they are all tied in with the election of judges. The Committee's decision in relation to Article 4 would influence the Committee's judgment as to the other Articles. He asked the Solicitor General of the United States, Mr. Charles Fahy, his adviser, to read Articles 5 to 14 from the draft of the Statute of the Permanent Court of International Justice numbered U. S. Jur. 1. Mr. Fahy read Article 5, concerning nomination of judges. He then pointed out that if Article 4 should be changed so as to have nomination of judges by governments the word "government" would have to be substituted for "members of the national groups".

Mr. Fahy then read Article 6, relating to nominees, Article 7 as to lists of nominees, and Article 8 as to election of judges by the Assembly and the Council. He pointed out that the last-mentioned Article contemplates a majority of the Assembly as well as a majority of the Council, separately.

Mr. Fahy then read Article 9 as to qualifications of judges and Article 10 as to method of election. He pointed out that the required majority is a majority of each of the two bodies and not of the aggregate number of their members.

Mr. Fahy then read Articles 11 to 14. Articles 11 and 12 related to vacancies on the Court, Article 13 to the term of members of the Court, and Article 14 to vacancies.

Sir Frederic Eggleston (Australia) suggested that the second paragraph of Article 5 might be clarified, since the last sentence meant simply that when there was only one vacancy each country could nominate but one candidate.

Ambassador Cordova (Mexico) suggested that since all these Articles relate to the same subject, i.e., the election of judges, they should all be referred to the same subcommittee. The Chairman inquired whether there was any objection to the proposal of the Mexican representative. There being no objection, the articles were referred to the subcommittee.

Mr. Fitzmaurice (United Kingdom) called attention to Article 13 which provides that the members of the Court shall be elected for nine years and that they may be reelected. He pointed out that under the present system it is possible that the terms of all the judges may expire at the same time and that in such a case there would be a practical break in the continuity of the Court since all the judges would be new. He thought that there should be a provision for the election of judges for nine years but that with respect to the first election, three judges should be elected for three years, three others for six years, and the other three for nine years. He stated that this proposal was based on the assumption that there would be only nine judges. If the number of judges was to be changed, other changes would have to be made accordingly.

Ambassador Mora (Chile) said that regardless of the number of judges there should be three groups elected at different times.

Dr. Wang (China) agreed with the proposal of the representative of the United Kingdom. He said that his experience in the Court made him believe that nine new judges, or a majority of new judges, would break the Court's continuity. For the initial period, he was of the opinion that the judges should be elected in groups.

Ambassador Cordova (Mexico) agreed with the representative of the United Kingdom but proposed that all judges be elected for nine years and that the groups which should be retired after the expiration of three and six years, respectively, be chosen by lot.

The Chairman said that he had received a suggestion that the representatives of Canada, France, and Norway be added to the subcommittee. There being no objection, he appointed them on the subcommittee.

Ambassador Cordova (Mexico) suggested that Mr. Fitzmaurice draft a text of Article 13 to give effect to the latter's suggestions. Mr. Fitzmaurice agreed to do so.

Dr. Escalante (Venezuela) submitted a document for revision of Articles 4 to 14 and suggested that the revision be referred to the subcommittee. The Chairman stated that if there was no objection this action would be taken. There was no objection.

The Chairman then proceeded to a discussion of Article 14, relating to vacancies, which he read. He pointed out that if the Dumbarton Oaks Proposals were approved by the San Francisco Conference the Security Council would be in continuous session and, therefore, the provision in Article 14 regarding the fixing of the date of elections at the next session of the

Council would have to be changed. However, this was a question of drafting and was held in abeyance for the time being.

The Chairman then took up Article 15 and pointed out that it was changed entirely, the proposed text providing for expiration of the term of a member of the Court upon his attaining the age of 75 years, and for ineligibility of election of persons over 72.

Dr. Abbass (Iraq) stated that he had great reverence for the wisdom of age, but in the dynamic civilization in which we live he would propose an age limit of 70 years. Sir Frederic Eggleston (Australia) agreed with him.

Mr. Fitzmaurice (United Kingdom) stated that his Government was opposed to any age limit. In the legal field the older the judge the better. Any age limit might exclude very desirable candidates.

Sir Michael Myers (New Zealand) agreed with the representative of the United Kingdom. Judges appointed for life may be required to retire when they attain a certain age limit, but since the judges of the Court are to be elected for nine years the electors would be free not to elect them if they believe that during the term of office the judges would reach an age of decrepitude. He preferred the original article.

Mr. Fitzmaurice (United Kingdom) stated that if the system of rotation was adopted it would be desirable to preserve the present article, so as not to upset the regular retirement.

The Chairman stated that, under the rotation proposal of the representative of the United Kingdom, Article 15 might be retained in its present form. He proposed that Article 15 be held in abeyance unless the Committee desired to retain it in its present form. He stated that he had no particular brief for the new article. He simply had in mind that people who are unable to take part in the activity of the Court should not be elected to membership.

Dr. Escalante (Venezuela) agreed with the proposed Article 15. M. Basdevant stated that since he is probably the senior member of the Committee he would not make any proposals concerning the provision as to age limit.

The Chairman pointed out that if Article 15 is retained in its present form, the question of vacancies would be taken care of. He asked the Committee to vote on the question whether the Article should be retained in that form. Twenty members voted for such retention, and it was decided that there would be no change.

The Chairman observed that the next question related to age limit. He asked the Committee whether it was ready to vote.

Dr Escalante (Venezuela) moved and Dr. Abbass (Iraq) seconded that there should be an age limit.

Mr. Fitzmaurice (United Kingdom) stated that he would like to observe that there was no need for an age limit and that there are sufficient safeguards with respect to this matter. Under the present Statute, judges are elected for nine years and they go out of office at the end of that period. Furthermore, this matter can be handled by the electors. If they believe that, because of age, a man should not be elected, the electors may, of course, refrain from appointing him on the Court.

Dr. Abbass (Iraq) pointed out that there are many able persons over 70 years of age, but that there are also such persons under that age. He favored an age limit.

Mr. Simpson (Liberia) was against an age limit.

Mr. Ramadan Pacha (Egypt) stated that there is an analogy between the Court and certain other institutions. He expressed the view that there was no need for such limitation and saw no advantage in having it, especially if the proposal of a renewal of the judges every three years is to be adopted.

The Chairman called for a vote. Twenty members voted against an age limit and ten in favor. The motion was lost.

The Chairman stated that it had been suggested to him by the representatives of Egypt, Iran, Iraq, Saudi Arabia, and Syria that one of them be appointed on the subcommittee on elections. They proposed the Egyptian representative, and, there being no objection, he was appointed.

The Chairman then took up Article 16, which prohibits members of the Court from engaging in any other occupation of a professional nature. Mr. Fitzmaurice (United Kingdom) stated that he would like to circulate a proposal to distinguish between members of the Court and judges. He expressed the view that the former should not be prohibited from engaging in other occupations of a professional nature, but that he would like to hold this Article in abeyance.

The Chairman stated that if there was no objection, the Article would be held in abeyance. He then took up Article 17, which prohibits a member of the Court from participating in the decision of any case with which he might have previously been connected as agent or counsel. He read the Article and inquired whether there was any objection thereto.

Dr. Abbass (Iraq) agreed with the provisions of Article 17 except with respect to the provision which prohibits participation in the decision of a case by a member of the Court who had previously taken part as a member of a commission of inquiry. He thought that a member of such commission gained experience which might be useful and saw no reason for barring him.

Mr. Simpson (Liberia) proposed the elimination of the words "an active" in the second line of the second paragraph of Article 17. He was of the opinion that a member need not have taken "an active" part to be barred and that if he has taken any part as agent or counsel he should be ineligible to participate in the decision of a case.

Mr. Basdevant (France) stated that the remarks of the Liberian representative related to the English text and that the French text did not contain the same difficulty.

The Chairman pointed out that both texts are official and suggested that the words "an active" be eliminated, especially since they are not in the French text.

Mr. Ramadan-Pacha (Egypt) said that the French text states that even a simple "intervention" is a bar. It would be desirable to find an equivalent word in English to take care of those cases in which there is "intervention".

Mr. Star-Busmann (Netherlands) thought that the question was not very important since Article 17 provides that any question of doubt may be resolved by the Court.

The Chairman saw no objection to the elimination of the two words, "an active". He put the question to a vote. Seventeen voted in favor of elimination, with no dissenting votes.

The Chairman then took up Article 18, which provides for the dismissal of a member of the Court in case of inability to fulfill the required conditions. He read this Article and asked if there were any comments.

Sir Frederic Eggleston (Australia) pointed out that Article 18 was in the negative form and that it raised a question of drafting.

The Chairman replied that since it had been in effect 25 years it should be approved unless there was an objection. There was no objection.

The Chairman then took up Article 19, which grants diplomatic immunities to members of the Court.

Mr. Fitzmaurice (United Kingdom) stated that since there was a correspondence between the old article and a similar article in the Covenant of the League of Nations there should be a correspondence between this provision and whatever analogous provision might be included in the initial Charter.

The Chairman thought that there should be immunity regardless of the nature of the provisions in the Charter. He thought that Article 19 should be approved.

Mr. Fitzmaurice (United Kingdom) stated that he agreed in principle and that the Article might be passed for the time being.

The Chairman then read Article 20 regarding oaths of office by members of the Court. There being no objection, the Article was approved.

He then read Article 21 which provides for the election by the Court of a President, a Vice-President, and a Registrar. The Article provides also that the duties of the Registrar of the Court shall not be deemed incompatible with those of the Secretary-General of the Permanent Court of Arbitration.

Mr. Fitzmaurice (United Kingdom) stated that it was not clear why the provision as to incompatibility was included in this Article. Mr. Jorstad (Norway) pointed out that, in practice, the two offices have never been held by the same person.

Mr. Basdevant (France) thought that the Secretary-General of the Court of Arbitration had limited activities and so he was able to be also a Registrar of the Court. However, if the Court had a great deal of work there would have to be a Registrar as well as a Secretary-General, Up to now there was no Secretary-General. There was, however, an Assistant Registrar. He was of the opinion that Article 21 might perhaps be changed to read that the Court might appoint a Registrar, and, if necessary, a Secretary-General.

Dr. Gavrilovic (Yugoslavia) agreed with the French representative. He said that the Registrar assisted the Court and, in addition, was in charge of administrative matters such as the appointment of personnel and the like. Probably there should be a Registrar to assist the Court and a Secretary-General to have administrative functions.

Mr. Fitzmaurice (United Kingdom) had no strong views as to this matter. However, he made a motion along the lines suggested by the French representative.

Mr. Nisot (Belgium) saw no reason for retention of the provision of Article 21 as to incompatibility since it was not shown that this provision was necessary. Dr. Gavrilovic (Yugoslavia) agreed with the Belgian representative and moved that the last paragraph of Article 21, which contains this provision, be eliminated. The Chairman put the question to a vote. Eighteen voted for elimination and seven against. The Chairman called attention to the fact that some of the representatives did not vote. He stated that if the Committee wanted to reopen the question he would entertain such a motion. Dr. De Beyle (Costa Rica) inquired whether the omission of the provision concerning incompatibility from Article 21 would result in making the holding of the two offices of Registrar and Secretary-General by the same person permissible. Ambassador Cordova (Mexico) stated that if this provision is eliminated the Court could appoint anyone it chose, including the Secretary-General of the Permanent Court of Arbitration. Dr. Gavrilovic called attention to the fact that the Permanent Court of International Justice and the Court of Arbitration are run by the same governments. He expressed the view that the Registrar should not be charged with additional duties. Dr. De Bayle expressed the view that elimination would not solve the question He raised the question whether elimination would make the holding of the two offices incompatible. Sr. Castro (El Salvador) said that elimination would carry an implication that the Secretary of the Permanent Court of Arbitration may be also a Registrar of the Permanent Court and favored omission of the Article.

The Chairman pointed out that the Committee had agreed to eliminate the provision regarding incompatibility and that the French representative had suggested the appointment of another officer of the Court to take care of the possibility that the work of the Court might be increased. The Chairman thought that the Court might appoint a Secretary-General if it found it desirable.

* Mr. Basdevant (France) moved that there should be a provision authorizing the Court to appoint such other officers as it might need. The motion was seconded. Mr. Jessup (United States) stated that under its rules the Court had been able to operate effectively so far in appointing other officers and that there was no need for the proposed amendment. Sir Frederic Eggleston (Australia) expressed the view that the Court had no power to appoint officers and that to do so might be ultra vires. He thought, therefore, that there might be reason for the suggested amendment. Dr. Wang (China) expressed the view that the Court had no power to create positions by rules of procedure. Mr. Star-Busmann (Netherlands) agreed with the Chinese representative. Mr. Nisot (Belgium) inquired whether this suggestion would not result in requiring the appointment

*[Corrigendum see p.103]

of all officials by the Court instead of by the Registrar, as is the case now.

Ambassador Mora (Chile) stated that if such a provision is introduced the Committee would be entering into the regulatory field, a thing which in his opinion should not be done. He thought that that field should be left to the appointing power of the Court. Mr. Gori (Colombia) agreed with the greater part of the remarks of the Chilean representative. He thought that the draftsman of this Article must have had some purpose in mind and that the provision as to incompatibility should not be eliminated.

The Chairman called attention to the fact that the Committee had already voted to eliminate that provision.

Sir Frederic Eggleston (Australia) stated that the provision authorizing the Court to appoint an officer did not necessarily imply that it could appoint other officers.*

The Chairman stated that the motion was to add at the end of the second paragraph of Article 21 the words "and such other officers as may be necessary". Mr. Spiropoulos (Greece) wanted to make some general observations. The Statute of the Court has been in force for about 25 years. The Committee wants now to change some provisions. He expressed the view that the Committee should leave the Statute as is, unless it is absolutely necessary to make changes. He thought that there should not be any changes in regard to this matter, especially since the members of the Committee were not the judges of the Court and did not know the pertinent details. Mr. Nisot (Belgium) agreed with the Greek representative that, as the Court functioned perfectly for 25 years, there should not be any changes. Mr. Fitzmaurice (United Kingdom) expressed the view that the omission as to the appointment of other officials must have been an oversight and that since the Committee has an opportunity to remedy such omissions it should do so.

Mr. Star-Busmann (Netherlands) agreed with the representative of the United Kingdom. The Chairman pointed out that in the United States administrative officials take action and in some cases go back to Congress for legislation authorizing them to take such action. These officials merely want to put it beyond any reasonable doubt that they have authority to act as they do. This is the situation here. It would do no harm to have such a provision. He put the question to a vote. Twenty-one representatives votes in favor and one opposed.

The Chairman then took up Article 22 which provides that the seat of the Court shall be at The Hague. He called attention to the fact that the question as to where the seat of the

*[Corrigendum see p.103]

Court should be is a question that could be left for the San Francisco Conference. However, if the Committee had any observations, they could be embodied in the report. Dr. Escalante (Venezuela) stated that the Venezuelan delegation agreed that the seat should be at The Hague but added that there should be a provision that the Court could meet, if necessary, in other places. He expressed the hope that other representatives would comment in regard to this matter.

Mr. Star-Busmann (Netherlands) stated that the seat of the Court is part of the "functioning" of the Court. He thought that this question should be decided here.

Mr. Spiropoulos (Greece) thought that the question was not a political one but believed that the questions to be referred to the San Francisco Conference need not be only political ones. He thought that questions of this character might be so referred and that this question should be decided by the San Francisco Conference.

Mr. Nisot (Belgium) thought that the question regarding the seat of the Court should be decided here and that the seat should be at The Hague.* Mr. Jorstad (Norway) stated that the seat should be at The Hague and called attention to the convenient location of that place as well as to the fact that the Netherlands Government had been most accommodating in its relations with the Court. Mr. Basdevant (France) thought that the Committee should make the recommendation as it was agreed at the morning meeting. It is true that the question might be left for decision by the San Francisco Conference, but he thought that the members of the Committee as jurists might take account of certain considerations. The prestige of the Permanent Court is associated with The Hague. He thought that the Committee should tell the San Francisco Conference that the seat should be at The Hague. He wondered, however, if something more should not be added to Article 22. Mr. Read (Canada) thought that the Court should be able to sit anywhere in the world, when necessary. He expressed the view that the Statute should contain such a provision.

Dr. Garcia (Peru) stated that the Peruvian delegation would vote for the article as it stands.

Mr. Fahy (United States) stated that he would like to make a suggestion that the Court should be able, in its discretion, to sit in other places than The Hague.

The Chairman stated that if there was no objection he would assume that the Committee approved the article as it stands. However, he pointed out that there had been suggestions

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to the effect that the Court should be able to hold sessions elsewhere than at The Hague. He called attention to the provisions of Article 28 under which chambers of the Court may sit elsewhere than at The Hague. Mr. El-Fakih (Saudi Arabia) proposed that the Court should have power to sit at The Hague or anywhere else, if necessary. Mr. Fitzmaurice (United Kingdom) called attention to the fact that Judge Manley O. Hudson expressed the view in his book on the Permanent Court of International Justice that the Court may sit elsewhere if it so desires and that there can be no doubt of the power of the Court to do so. Judge Hudson is of the opinion, Mr. Fitzmaurice said, that Articles 44 and 50 of the Statute show that the Court is not bound to The Hague in its activities. Ambassador Cordova (Mexico) expressed the view that it would clarify tha situation if the Court was given power to sit elsewhere.

Mr. Star-Busmann (Netherlands) stated that the question of the seat of the Court might be confused with the question whether the Court might sit elsewhere than at The Hague from time to time. Mr. Spiropoulos (Greece) said that there was no difference between the two questions. He did not agree with the Canadian representative that the Court should be able to sit elsewhere. He thought that the Committee should choose The Hague as the seat of the Court and that after such choice the Court could not sit in any other place. He stated that Article 28 did not relate to the Court, but to chambers thereof. He expressed the view that the Court should sit at The Hague but that the question may be left open for decision by the San Francisco Conference. Mr. Benes (Czechoslovakia) stated that the Court should sit at The Hague or in any other place, if necessary. Mr. Castro (El Salvador) proposed the addition of the following words at the end of the first paragraph of Article 22: "This, however, will not prevent the Court from sitting elsewhere if circumstances require."

The Chairman called attention to the fact that the hour of adjournment had arrived and that the proposal of the Venezuelan representative might be discussed on the following day.

The third meeting was adjourned at 5:30 p.m.

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Washington, D. C.

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Jurist 52(38)
G/40
April 16, 1945

CORRIGENDUM OF SUMMARY OF THIRD MEETING (REVISED)

Delete the second sentence of the third full paragraph, page 10 and insert a sentence as follows:

> "Mr. Jorstad stated that the seat should be at The Hague and called attention to the convenient location of that place as well as to the excellent relations that had always existed between the Court and the Netherlands Government".

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C

RESTRICTED
Jurist 67(38)
G/54
April 19, 1945

CORRIGENDUM OF SUMMARY OF THIRD MEETING (REVISED)

On page 8 at the beginning of paragraph 4, delete r. Basdevant" and substitute "Sir Frederic Eggleston."

On page 9, at the end of the third full paragraph, dd:

> ":on the contrary, it rather excluded it."

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 22
G/16
April 11, 1945

SUMMARY OF FOURTH MEETING

Interdepartmental Auditorium, Committee Room B
Wednesday, April 11, 1945, 10:15 a.m.

Present at the meeting were the following delegates of the United Nations:

United States of America: Mr. Green H. Hackworth, Chairman
Australia: The Rt. Hon. H. V. Evatt
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Sr. A. Camillo de Oliveira
Canada: Mr. John E. Read
Chile: Ambassador Marcial Mora
China: Dr. Wang Chung-hui
Colombia: Sr. R. Urdaneta A.
Costa Rica: Dr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
Dominican Republic: Sr. José Ramon Rodriguez
Ecuador: Sr. L. Neftali Ponce
Egypt: Hafez Ramadan Pacha
El Salvador: Sr. Hector David Castro
Ethiopia: Dr. Ombayé Woldemariam
France: M. Jules Basdevant
Greece: Professor John Spiropoulos
Guatemala: Dr. Enrique Lopez-Herrarte
Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: Mr. C. L. Simpson
Luxembourg: Minister Hugues Le Gallais
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Star-Busmann
New Zealand: The Rt. Hon. Sir Michael Myers
Nicaragua: Ambassador Guillermo Sevilla-Sacasa
Norway: M. Lars J. Jorstad
Panama: Sr. Narciso F. Garay
Paraguay: Dr. Celso R. Velázquez
Peru: Dr. Arturo Garcia

Philippine Commonwealth: Dr. José F. Imperial (Adviser)
Saudi Arabia: Mr. Assad El-Fakih
Syria: Mr. Costi K. Zurayk
Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics: Mr. N. C. Novikov
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. Lorenzo Vincens Thievent
Venezuela: Dr. Luis E. Gómez-Ruiz (Adviser)
Yugoslavia: Dr. Stoyan Gavrilovic

The Chairman, Mr. Hackworth, called the meeting to order at 10:15 a.m. and suggested that the Committee should try to complete its consideration of the first 33 articles and then recess in the afternoon to permit the subcommittees to meet. One subcommittee would consider Article 1 and the other Articles 4 through 14. They might make reports the following morning. The other members of the Committee might, in the meantime, study Articles 34 and following.

Mr. Hackworth then announced that the Committee should continue its consideration of Article 22 on the seat of the Court which it had been discussing at the close of the previous session. He called attention to the fact that there had been a motion to amend the first paragraph of Article 22 to read as follows:

> "The seat of the Court shall be established at The Hague; but the Court is empowered to hold sessions and render valid decisions elsewhere, whenever it considers it necessary or desirable."

Dr. Gavrilovic (Yugoslavia) paid tribute to the Netherlands for its hospitality to the Court but suggested that it was desirable to change the seat of the Court. He proposed a resolution expressing gratitude to the Netherlands for its hospitality but saying that the seat of the Court should be established elsewhere, the country to be nominated at the San Francisco Conference.

Mr. Ramadan Pacha (Egypt) pointed out that international juridical institutions had been centered at The Hague and that certain treaties provided for reference of cases to tribunals established at The Hague. He thought retaining the seat of the Court at The Hague would emphasize the universal character of the interest in the Court.

Sr. Dihigo (Cuba) supported the view that the seat of the Court should be at The Hague but that the Court should be empowered to sit elsewhere.

M. Nisot (Belgium) expressed agreement with this point of view, pointing out that it was in harmony with the principle of maintaining the Court as much as possible as before.

Sr. Dihigo asked that the motion presented by the delegate of El Salvador at the previous session be read again.

Mr. Hackworth explained that the resolution by the delegate of El Salvador was to retain the first sentence of Article 22 and to add a new sentence as follows:

> "This, however, would not prevent the Court from sitting elsewhere when circumstances so require."

Sr. Castro (El Salvador) suggested that this motion be considered first and that the draft read by the Chairman at the beginning of the meeting be treated as a substitute for the motion made by him.

Mr. Hackworth suggested that the matter be referred to a subcommittee which would bring in an agreed draft. In the absence of objection, he referred the matter to a subcommittee composed of the delegates of El Salvador, Cuba, and Yugoslavia.

Mr. Fitzmaurice (United Kingdom) suggested that the principle might first be debated in order to facilitate the drafting.

Dr. Benes (Czechoslovakia) and M. Nisot supported this suggestion.

M. Basdevant (France) said that he would like to enter a reservation with regard to the drafting. The term "session" was abandoned in 1929 because at that time the Court was made truly permanent and held no more individual sessions. He thought the term "session" should be eliminated.

Mr. Hackworth called for a vote on whether the Court might hold sessions elsewhere. Twenty-two votes being cast in the affirmative, the motion was carried. Mr. Hackworth directed the subcommittee to prepare a draft in this sense.

Mr. Ramadan Pacha called attention to the fact that there were really two questions to be decided, namely, whether the seat of the Court should be at The Hague and whether the Court should be empowered to hold sessions elsewhere. He suggested that it might be provided that the Court might sit en banc instead of saying that the Court might hold sessions elsewhere.

Mr. Hackworth said he believed there was agreement that the seat of the Court should be at The Hague.

Dr. Gavrilovic said that he had moved that the seat of the Court should be moved from The Hague.

Since there was no second to this motion, it was ruled out of order.

Mr. Hackworth next read Article 23 of the Statute.

Dr. Evatt (Australia) inquired as to the meaning of the term "normal journey". He questioned whether such a provision was relevant in view of present-day travel conditions.

Mr. Hackworth said he believed travel by air was not yet normal.

M. Nisot said that he had participated in the deliberations of the 1929 Committee of Jurists and that the term "normal" was used to exclude travel by air.

Mr. Ramadan Pacha delcared that while the paragraph in question was justified 25 years ago, he did not believe it was justified today and thought it might be obsolete in 10 years more. He suggested that the elimination of this paragraph would eliminate mention of vacations but that this might be left to the rules of the Court. He proposed that paragraph 2 of Article 22 should be eliminated.

Mr. Hackworth said that he thought conditions at the time of the drafting of the provision should govern its interpretation and that "normal" should therefore be interpreted as referring to travel by rail or surface vessel.

Dr. Evatt suggested that distance rather than travel time might be mentioned in this paragraph. He thought that elimination of the paragraph might deprive judges of vacations.

Ambassador Cordova (Mexico) suggested that allowance might be made for time spent in traveling.

Dr. Gómez-Ruiz (Venezuela, Adviser) said that he would like to make two proposals. The first was to support the proposal of the delegate of Egypt on the elimination of the second paragraph of Article 22. He believed that the last paragraph of this article took care of the problem of judges' vacations.

The second proposal would be to strike out the words "whose homes are situated at more than five days of normal journey from The Hague". This would permit judges to have six months' leave every three years. This proposal was seconded.

Mr. Jorstad (Norway) said that if the Court were composed of 15 judges it would be possible to allow each one six months' leave every three years. But if the Court were reduced to 9 it would be impossible to do so, for a quorum would not be available.

Mr. Hackworth called for a show of hands on the motion by the delegate from Venezuela. Twelve voted in favor, and nine were opposed. The motion was therefore carried. Mr. Hackworth suggested, however, that the matter might be referred to a drafting committee.

Dr. Evatt said that he thought the observation of the delegate of Norway ought to be considered either in connection with this article or in connection with the number of judges. He moved that the subcommittee considering the number of judges should consider the effect of granting leave in reaching its decision.

Ambassador Cordova said that he thought the problem might be resolved by providing that leave might be granted every three years, not including the time spent in traveling. The extent of the leaves to be granted might be left to the rules of the Court. Since there was no second to the motion by the delegate from Australia, Mr. Hackworth declared that the subject would be considered closed but that the subcommittee considering the number of judges might take account of the observations of the delegate of Norway.

Mr. Read (Canada) said that the Committee would go over the whole Statute again. In this connection he wished to refer to a proposal of the Canadian Bar that a Court of 15 might never have more than 10 judges actually sitting. Five of the judges might be allowed leave for a full year.

Mr. Hackworth then read the third and final paragraph of Article 23. Mr. Read moved that this be referred to a subcommittee for further consideration.

Dr. Benes seconded this motion.

Mr. Hackworth suggested that this question might be referred to the subcommittee considering Article 22.

Mr. Fitzmaurice suggested that it might be considered by the subcommittee dealing with the number of judges.

Sr. Castro supported this suggestion, saying that he had been impressed by the observations of the delegates of Norway and Canada.

Mr. Hackworth agreed to refer this matter to the subcommittee considering the number of judges and the mode of election.

Mr. Hackworth then read Article 24 of the Statute and asked for comments upon it. Since there were none, he assumed that there was no objection to Article 24.

Mr. Hackworth then read Article 25 and suggested that since this article involved questions relating to the number of judges it should be referred to the subcommittee dealing with that subject.

Mr. Hackworth explained that in the American proposal Article 26 of the present Statute is omitted and that two short paragraphs are substituted.

M. Nisot felt that the last paragraph of Article 26 should be retained. This paragraph provides that the International Labor Office shall furnish the Court with all relevant information and shall receive from the Court copies of all written procedures in appropriate cases.

M. Basdevant proposed a change in the French text of the proposal to make it conform more closely to the English text. The proposed French text is as follows:

> "La Cour peut, de pemps à autre, constituer une ou plusieurs Chambres pour connaître d'affaires déterminées ou de catégories déterminées d'affaires. Le Réglement de la Cour pourra pourvoir à l'institution d'assesseurs siégeant dans ces Chambres sans droit de vote.
>
> "A la demande des parties, les affaires seront soumises à ces Chambres et jugées par elles."

With reference to the proposal by M. Nisot, M. Basdevant thought that the point raised by M. Nisot was covered by Article 34 of the American proposal, which enables public international organizations to furnish the Court with relevant information.

M. Nisot pointed out that the last-mentioned article did not provide for supplying copies of proceedings to the Organization.

Mr. Hackworth thought that there was no reason why the International Labor Organization should be given treatment distinguishing it from other public international organizations. Articles 26 and 27 of the Statute have never been used. Under the United States proposals, chambers of the Court are made available to deal with any type of case. He suggested that the relevant articles of the American proposal should be read together before reaching a decision.

M. Nisot moved the retention of the last paragraph of the present Article 26.

Minister Gajardo (Chile) opposed the suppression of Article 26 on the ground that such action might create resentment among the working classes. He considered that this article represented an achievement on the part of labor and should be retained.

Sr. Castro said that the idea behind the suppression is to put these controversies on the same basis as other classes of cases. He agreed to the United States proposal on the understanding that labor cases may freely be brought before the Court on the same footing as other cases.

Dr. Wang (China) observed that the chamber has not been used.

Mr. Novikov (Union of Soviet Socialist Republics) considered that the American proposal was intended to deal with all classes of cases and, therefore, should be supported. He thought that the elimination would not be detrimental to the laboring classes since, as Dr. Wang mentioned, the chamber has not been used. He considered that the Belgian motion should not be adopted.

Dr. Evatt inquired whether the chambers under the American proposal would be formed from members of the Court.

Mr. Hackworth replied in the affirmative.

Dr. Wang suggested that the phrase "to sit with such chambers" in the first paragraph of the proposed Article 26 be changed to read "to sit in such chambers".

Mr. Fitzmaurice referred to paragraph 2 of the original Article 26 and pointed out that under its provisions assessors might sit in labor cases, even before the full Court. In reply to an inquiry from the Chairman he said that he was only giving labor cases as an example. The proposal would be general. He suggested that the American text be changed to take out the words "to sit with such chambers" and that the rules might provide for such assessors to sit either in such chambers, or with the full Court in appropriate cases without the right to vote.

Mr. Hackworth appointed Dr. Wang, Ambassador Mora (Chile), and Mr. Novikov as a committee to bring in a report on Article 26.

Dr. Wang suggested that the chambers consist of five judges and two assessors to accord with the provision concerning summary chambers. Mr. Hackworth said that this would be considered by the subcommittee.

Mr. Fitzmaurice was added to the committee on the suggestion of Dr. Gómez-Ruiz.

Mr. Novikov asked to be excused from this committee since he had another committee appointment.

Mr. Hackworth inquired whether M. Assad El-Fakih (Saudi Arabia) would serve and on the suggestion of the latter appointed Dr. Abbass (Iraq).

Mr. Hackworth then read the proposed Article 27 in the American draft.

Mr. Basdevant proposed the following French text as better conforming to the English:

> "Tout jugement rendu par l'une des Chambres prévues aux articles 26 et 29 sera un jugement rendu par la Cour."

Mr. Hackworth said that in the absence of an objection, Article 27 would be considered as tentatively agreed to. Mr. Hackworth read Article 28 of the proposed draft and referred it to the committee concerned with the seat of the Court.

Mr. Hackworth then read Article 29. Mr. Fitzmaurice proposed the suppression of this article, pointing out that although set up year after year, it had only been used one year twice. He felt that if the case is important enough to be initiated, it is important enough to go through the whole procedure.

Mr. Hackworth said that he anticipated a greater use of the Court and that there might be some advantage in having a small chamber that can meet on the scene of the dispute he referred to the Trail Smelter case between the United States and Canada where the Tribunal had met in the region affected and had visited the smelter in question.

Sr. Castro raised a question concerning the last sentence of the proposed article, which states that "Two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit".

Mr. Jorstad, Dr. Wang, and Ambassador Cordova considered that this did not mean that two judges would sit, but that it was intended to assure the availability of an alternate.

Dr. Escalante (Venezuela) pointed out that the earlier proposed article on chambers (Article 26) did not specify the number of judges.

Mr. Hackworth asked the committee already appointed on Article 26 to examine Article 29 with a view to the reconciliation of the two. Mr. Hackworth then read Article 30.

Mr. Ramadan Pacha pointed out that the word "procedure" in this article has a somewhat different meaning from the word "attribution" in the French text.

Mr. Fitzmaurice agreed that "procedure" has a narrower connotation, and that it is intended that the Court should have power to carry out any task entrusted to it by the Statute.

Mr. Hackworth asked the committee on Articles 26 and 29 to consider also Article 30 with the reconciliation of the texts in view.

Mr. Hackworth read the first three paragraphs of Article 31 on national judges. Dr. Abbass said that he believed the Roman maxim that no man ought to be a judge in his own case was applicable here. He knew that it was argued that national judges were better informed about national problems than a foreigner would be, but he felt that a national judge would be placed in the position of a solicitor rather than a judge. He believed that national judges should always be excluded from cases in which their countries were interested.

Mr. Hackworth said that an important question of principle was involved here. He personally was willing to agree that national judges should not be allowed to sit, but he felt that opinion in general was in favor of having a national judge to explain his country's point of view. He thought it was questionable whether a country would be willing to entrust its case to a Court on which it had no national.

Dr. Wang paid homage to the principle cited by the delegate from Iraq but said that if the Court were called upon to interpret a multilateral treaty and national judges were not allowed to sit, it might be impossible to get a quorum.

Mr. Hackworth said that he thought this problem was covered by the next to the last paragraph of Article 31, which provided that several parties in the same interest should be reckoned as one party only.

Dr. Wang pointed out that elsewhere in the Statute it was provided that interested parties might intervene in the case.

Dr. Moneim-Riad Bey (Egypt) called attention to Rule No. 13 of the Court's Rules which provides that, if the President of the Court is a national of a state party to a case, the President should hand over his functions in that case to the Vice President. He felt that the President did not have any more power in the consideration of a case than any other judge and therefore that Rule No. 13 was somewhat in contradiction to Article 31. He thought that account should be taken of the discrepancy involved.

Mr. Fitzmaurice thought that there was considerable difference between the position of a judge and of the President of the Court. He pointed out that the President had a casting vote and considerable influence upon the Court's procedure in handling a case. In view of these facts, he thought that the rule ought not to be altered.

Mr. Hackworth suggested that the rule should be left to the Court.

Mr. Fitzmaurice called attention to the fact that the wording of Article 31 might need to be changed if the United Kingdom proposal that persons should be elected members of the Court and should serve as national judges was adopted. This was a matter for future consideration if the United Kingdom's proposal was adopted.

Mr. Hackworth asked the secretariat to take special note of this point.

M. Basdevant declared that national judges were placed in a very difficult position and yet he felt that Dr. Wang's point was well taken. He suggested, therefore, that national judges might continue to sit and take part in the deliberations of the Court but without the right to vote. He thought that this might be an acceptable system.

Dr. Abbass said that he realized that this was a very important suggestion. He felt, however, that if national judges were allowed to sit, their views might receive undue attention. He noted that national judges, especially ad hoc judges, usually dissented from the decisions. He felt that these dissents might create bad feeling.

Minister Oliveira (Brazil) said that he was ready to support M. Basdevant's proposal if he wished to make a motion.

Dr. Moneim-Riad Bey suggested that this matter might be referred to the subcommittee considering the nomination and election of judges. He said that he would also like to have that subcommittee consider Rule No. 13 on the position of a President.

M. Nisot declared that he did not wish to commit himself at this time but he asked whether a judge who is not permitted to vote remained a judge for purposes of reckoning a quorum.

Mr. Hackworth said he thought a judge who was not allowed to vote became, in effect, an assessor. He said he thought it was questionable whether countries would be willing to entrust cases to a Court composed wholly of non-nationals. The United States might be willing to do so, but others might not. He said that the subcommittee considering the nomination and election of judges might consider this proposal and make recommendations if it wished. He then read the last three paragraphs of Article 31 and asked the pleasure of the committee on the whole article.

M. Star-Busmann (Netherlands) stated that he was greatly impressed by M. Basdevant's observation, but he thought that the votes of national judges actually canceled one another. He suggested that some concession had to be made to human nature, and he therefore preferred to maintain the system allowing ad hoc judges to vote.

Mr. Jorstad said he thought that without ad hoc judges countries might hesitate to send cases to the Court. Dr. Badawi (Egypt) suggested as a compromise that in case one of the national judges decided to sit without casting a vote the other national judge should not vote.

Mr. Hackworth felt that this would circumscribe the freedom of action of the judges. He declared that national judges do not always vote in favor of their countries, and he cited two cases to which the United States had been party in recent years in which the decisions had been unanimous. These were the North American Dredging Co. case between Mexico and the United States, and the Cayuga Indian case between Canada and the United States. He thought that having an ad hoc judge without the right to vote would be very little solace to those who believed that national judges served a useful purpose. In the absence of a motion he assumed that there was agreement to allow Article 31 to stand.

Dr. Abbass said that he wished to make a motion that national judges be eliminated.

Professor Spiropoulos (Greece) seconded the motion and said that he was much impressed by the views of M. Basdevant. In practice, ad hoc judges of the Permanent Court had voted in favor of their countries. Mr. Hackworth's examples were not cases which had come before the Court. National judges were undoubtedly in a difficult position, but he called attention to the fact that every country would like to have a judge upon the Court though of course all could not do so. He felt, therefore, that the institution of ad hoc judges should be retained.

Sr. Dihigo said that he was impressed by M. Basdevant's proposal. An ad hoc judge knew that he had been appointed to defend the position of his country. A national judge, who was a regular member of the Court, was in an even more difficult position. He, therefore, proposed a motion along the lines of M. Basdevant's suggestion.

Mr. Hackworth pointed out that the motion of the delegate of Iraq was before the Committee. Mr. Read said that he would like to present his country's view that the present practice should stand. He wished to say that if Canada ever had occasion to appoint an ad hoc judge to the Court, that judge would be truly impartial. He called attention to the fact that Canada had signed the "optional clause" and believed that the compulsory jurisdiction of the Court should be broadened. He felt that the effect of the elimination of national judges upon the acceptance of compulsory jurisdiction should be considered. He thought countries might be reluctant to sign the "optional clause" if there were no national judges.

Dr. Abbass agreed with the delegate of Canada that national judges should be impartial but pointed out that it was impossible to guarantee that they would be on all occasions. He thought that in order to make the Court thoroughly impartial, national judges should be eliminated.

Mr. Hackworth called for a vote upon the motion of the delegate from Iraq. There were two votes in favor and twenty-three opposed. The motion was therefore lost.

Sr. Castro said that he had been impressed by Dr. Wang's observation about multilateral treaties. He suggested a change in the second paragraph so that it would read "If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party or parties may choose each a person to sit as judge." He thought that this would make the second paragraph consistent with the third.

Mr. Hackworth suggested that the subcommittee to which paragraph 2 had been referred might take this into account.

Mr. Hackworth then read Article 32. Dr. Evatt suggested that the words "and other officers" should be added in paragraphs 6 and 7. Mr. Hackworth suggested that this proposal should be referred to the subcommittee considering Article 22.

Mr. Hackworth then read Article 33 which was accepted without discussion.

The meeting adjourned at 1 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 46(22)
G35
April 14, 1945

SUMMARY OF FOURTH MEETING

(Revised)

Interdepartmental Auditorium, Conference Room B
Wednesday, April 11, 1945, 10:15 a.m.

Present at the meeting were the following representatives of the United Nations:

United States of America: Mr. Green H. Hackworth, *Chairman*
Australia: Sir Frederic W. Eggleston (Alternate)
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Minister A. Camillo de Oliveira (Alternate)
Canada: Mr. John E. Read
Chile: Ambassador Marcial Mora
China: Dr. Wang Chung-hui
Colombia: Sr. José J. Gori (Alternate)
Costa Rica: Dr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
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Ecuador: Dr. L. Neftali Ponce
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El Salvador: Ambassador Hector David Castro
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Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: The Honorable C. L. Simpson
Luxembourg: Minister Hugues Le Gallais
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Star-Busmann
New Zealand: The Rt. Hon. Sir. Michael Myers
Nicaragua: Ambassador Guillermo Sevilla-Sacasa
Norway: M. Lars J. Jorstad
Panama: Sr. Narciso E. Garay
Paraguay: Dr. Celso R. Velázquez
Peru: Dr. Arturo Garcia

Philippine Commonwealth: Dr. José F. Imperial (Adviser)
Saudi Arabia: His Excellency Assad El-Fakih
Syria: M. Costi K. Zurayk
Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics: Minister N. V. Novikov
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. Lorenzo Vinçens Thievent
Venezuela: Dr. Luis E. Gomez-Ruiz (Adviser)
Yugoslavia: The Hon. Dr. Stojan Gavrilovic

The Chairman, Mr. Hackworth (United States), called the meeting to order at 10:15 a.m. and suggested that the Committee try to complete its consideration of the first 33 articles and then recess in the afternoon to permit the subcommittees to meet. One subcommittee would consider Article 1 and the other Articles 3 through 13. They might make reports the following morning. The other members of the Committee might, in the meantime, study Articles 34 and following.

The Chairman then announced that the Committee should continue its consideration of Article 22 on the seat of the Court which it had been discussing at the close of the previous session. He called attention to the fact that there had been a motion to amend the first paragraph of Article 22 to read as follows:

> "The seat of the Court shall be established at The Hague; but the Court is empowered to hold sessions and render valid decisions elsewhere, whenever it considers it necessary or desirable."

Dr. Gavrilovic (Yugoslavia) paid tribute to the Netherlands for its hospitality to the Court but suggested that it was desirable to change the seat of the Court. He proposed a resolution expressing gratitude to the Netherlands for its hospitality but saying that the seat of the Court should be established elsewhere, the country to be nominated at the San Francisco Conference.

Hafez Ramadan Pacha (Egypt) pointed out that international juridical institutions had been centered at The Hague and that certain treaties provided for reference of cases to tribunals established at The Hague. He thought retaining the seat of the Court at The Hague would emphasize the universal character of the interest in the Court.

Sr. Dihigo (Cuba) supported the view that the seat of the Court should be at The Hague but that the Court should be empowered to sit elsewhere.

M. Nisot (Belgium) expressed agreement with this point of view, pointing out that it was in harmony with the principle of maintaining the Court as much as possible as before.

Sr. Dihigo (Cuba) asked that the motion presented by the representative of El Salvador at the previous session be read again.

The chairman explained that the resolution by the representative of El Salvador was to retain the first sentence of Article 22 and to add a new sentence as follows:

"This, however, would not prevent the Court from sitting elsewhere when circumstances so require."

Ambassador Castro (El Salvador) suggested that this motion be considered first and that the draft read by the Chairman at the beginning of the meeting be treated as a substitute for the motion made by him.

The chairman suggested that the matter be referred to a subcommittee which would bring in an agreed draft. In the absence of objection, he referred the matter to a subcommittee composed of the representatives of El Salvador, Cuba, and Yugoslavia.

Mr. Fitzmaurice (United Kingdom) suggested that the principle might first be debated in order to facilitate the drafting.

Dr. Benes (Czechoslovakia) and M. Nisot (Belgium) supported this suggestion.

Professor Basdevant (France) said that he would like to enter a reservation with regard to the drafting. The term "session" was abandoned in 1929 because since that time the Court has been in permanent session and held no more individual sessions. He thought the term "session" should be eliminated.

The chairman called for a vote on whether the Court might hold sessions elsewhere. Twenty-two votes being cast in the affirmative, the motion was carried. The chairman directed the subcommittee to prepare a draft in this sense.

Hafez Ramadan Pacha (Egypt) called attention to the fact that there were really two questions to be decided, namely, whether the seat of the Court should be at The Hague and whether the Court should be empowered to hold sessions elsewhere. He suggested that it might be provided that the Court might sit en banc elsewhere.

The Chairman said he believed there was agreement that the seat of the Court should be at The Hague.

Dr. Gavrilovic said that he had moved that the seat of the Court should be moved from The Hague.

Since there was no second to this motion, it failed of adoption.

The Chairman next read Article 23 of the Statute.

Sir Frederic Eggleston (Australia) inquired as to the meaning of the term "normal journey". He questioned whether such a provision was relevant in view of present-day travel conditions.

The Chairman said he believed travel by air was not yet normal.

M. Nisot (Belgium) said that he had participated in the deliberations of the 1929 Committee of Jurists and that the term "normal" was used to exclude travel by air.

Hofez Ramadan Pacha (Egypt) declared that while the paragraph in question was justified 25 years ago, he did not believe it was justified today and thought it might be obsolete in 10 years more. He suggested that the elimination of this paragraph would eliminate mention of vacations but that this might be left to the rules of the Court. He proposed that paragraph 2 of Article 22 should be eliminated.

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Dr. Gómez-Ruiz (Venezuela) said that he would like to make two proposals. The first was to support the proposal of the representative of Egypt on the elimination of the second paragraph of Article 22. He believed that the last paragraph of this article took care of the problem of judges' vacations.

The second proposal would be to strike out the words "whose homes are situated at more than five days of normal journey from The Hague". This would permit all judges to have six months' leave every three years. This proposal was seconded.

M. Jorstad (Norway) said that if the Court were composed of 15 judges it would be possible to allow each one six months' leave every three years. But if the Court were reduced to 9 it would be impossible to do so, for a quorum would not be available.

The Chairman called for a show of hands on the motion by the representative of Venezuela. Twelve voted in favor, and nine were opposed. The motion was therefore carried. The Chairman suggested, however, that the matter might be referred to a drafting committee.

Sir Frederic Eggleston (Australia) said that he thought the observation of the representative of Norway ought to be considered either in connection with this article or in connection with the number of judges. He moved that the subcommittee considering the number of judges should consider the effect of granting leave in reaching its decision.

Ambassador Cordova (Mexico) said that he thought the problem might be resolved by providing that leave might be granted every three years, not including the time spent in traveling. The extent of the leaves to be granted might be left to the rules of the Court. Since there was no second to the motion by the representative of Australia, the Chairman declared that the subject would be considered closed but that the subcommittee considering the number of judges might take account of the observations of the representative of Norway.

Mr. Read (Canada) said that the Committee would go over the whole Statute again. In this connection he wished to refer to the proposals of the Canadian Bar which called attention to the fact that a Court of 15 might never have more than 10 judges actually sitting.

The Chairman then read the third and final paragraph of Article 23. Mr. Read moved that this be referred to a subcommittee for further consideration.

Dr. Benes (Czechoslovakia) seconded this motion.

The Chairman suggested that this question might be referred to the subcommittee considering Article 22.

Mr. Fitzmaurice (United Kingdom) suggested that it might be considered by the subcommittee dealing with the number of judges.

Ambassador Castro (El Salvador) supported this suggestion saying that he had been impressed by the observations of the representatives of Norway and Canada.

The Chairman agreed to refer this matter to the subcommittee considering the number of judges and the mode of election.

The Chairman then read Article 24 of the Statute and asked for comments upon it. Since there were none, he assumed that there was no objection to Article 24.

The Chairman then read Article 25 and suggested that since this article involved questions relating to the number of judges it should be referred to the subcommittee dealing with that subject.

The Chairman explained that in the United States proposals Article 26 of the present Statute is omitted and that two short paragraphs are substituted.

M. Nisot (Belgium) felt that the last paragraph of Article 26 should be retained. This paragraph provides that the International Labor Office shall furnish the Court with all relevant information and shall receive from the Court copies of all written procedures in appropriate cases.

Professor Basdevant (France) proposed a change in the French text of the proposal to make it conform more closely to the English text. The proposed French text is as follows:

> "La Cour peut, de temps à autre, constituer une ou plusieurs Chambres pour connaître d'affaires déterminées ou de catégories déterminées d'affaires. Le Réglement de la Cour pourra pourvoir à l'institution d'assesseurs siégeant dans ces Chambres sans droit de vote.
>
> "A la demande des parties, les affaires seront soumises à ces Chambres et jugées par elles."

With reference to the proposal by M. Nisot, Professor Basdevant thought that the point raised by M. Nisot was covered by Article 34 of the United States proposals, which enables public international organizations to furnish the Court with relevant information.

M. Nisot (Belgium) pointed out that the last-mentioned article did not provide for supplying copies of proceedings to the organization.

The Chairman thought that there was no reason why the International Labor Organization should be given treatment distinguishing it from other public international organizations. Articles 26 and 27 of the Statute have never been used. Under the United States proposals, chambers of the Court are made available to deal with any type of case. He suggested that the relevant articles of the United States proposals should be read together before reaching a decision.

M. Nisot (Belgium) moved the retention of the last paragraph of the present Article 26.

Minister Gajardo (Chile) opposed the suppression of Article 26 on the ground that such action might create resentment among the working classes. He considered that this article represented an achievement on the part of labor and should be retained.

Ambassador Castro (El Salvador) said that the idea behind the suppression is to put these controversies on the same basis as other classes of cases. He agreed to the United States proposal on the understanding that labor cases may freely be brought before the Court on the same footing as other cases.

Dr. Wang (China) observed that the chamber has not been used.

Minister Novikov (Soviet Union) considered that the American proposal was intended to deal with all classes of cases and, therefore, should be supported. He thought that the elimination would not be detrimental to the laboring classes since, as Dr. Wang mentioned, the chamber has not been used. He considered that the Belgian motion should not be adopted.

Sir Frederic Eggleston (Australia) inquired whether the chambers under the American proposal would be formed from members of the Court.

The Chairman replied in the affirmative.

Dr. Wang (China) suggested that the phrase "to sit with such chambers" in the first paragraph of the proposed Article 26 be changed to read "to sit in such chambers".

Mr. Fitzmaurice (United Kingdom) referred to paragraph 2 of the original Article 26 and pointed out that under its provisions assessors might sit in labor cases, even before the full Court. In reply to an inquiry from the Chairman he said that he was only giving labor cases as an example. The proposal would be general. He suggested that the American text be changed to take out the words "to sit with such chambers" and that the rules might provide for such assessors to sit either in such chambers, or with the full Court in appropriate cases without the right to vote.

The Chairman appointed the representatives of China, Chile, and the Soviet Union as a committee to bring in a report on Article 26.

Dr. Wang suggested that the chambers consist of five judges and two assessors to accord with the provision concerning summary chambers. The Chairman said that this would be considered by the subcommittee.

Mr. Fitzmaurice (United Kingdom) was added to the committee on the suggestion of Dr. Gómez-Ruiz (Venezuela).

Minister Novikov (Soviet Union) asked to be excused from this committee since he had two other committee appointments.

The Chairman inquired whether M. Assad El-Fakih (Saudi Arabia) would serve and on the suggestion of the latter appointed Dr. Abbass (Iraq).

The Chairman then read the proposed Article 27 in the American draft.

Professor Basdevant (France) proposed the following French text as better conforming to the English:

> "Tout jugement rendu par l'une des Chambres prévues aux articles 26 et 29 sera un judement rendu par la Cour."

The Chairman said that in the absence of an objection, Article 27 would be considered as tentatively agreed to. He then read Article 28 of the proposed draft and referred it to the committee concerned with the seat of the Court.

The Chairman then read Article 29. Mr. Fitzmaurice (United Kingdom) proposed the suppression of this article, pointing out that although set up year after year, the chamber of summary procedure had only been used once or twice. He felt that if the case is important enough to be initiated, it is important enough to go through the whole procedure.

The Chairman said that he anticipated a greater use of the Court and that there might be some advantage in having a small chamber that can meet on the scene of the dispute. He referred to the Trail Smelter case between the United States and Canada in which the Tribunal had met in the region affected and had visited the smelter in question.

Ambassador Castro (El Salvador) raised a question concerning the last sentence of the proposed article, which states that "two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit".

M. Jorstad (Norway), Dr. Wang (China), and Ambassador Cordova (Mexico) considered that this did not mean that two judges would sit, but that it was intended to assure the availability of an alternate.

Dr. Gómez-Ruiz (Venezuelz) pointed out that the earlier proposed article on chambers (Article 26) did not specify the number of judges.

The Chairman asked the Subcommittee already appointed on Article 26 to examine Article 29 with a view to a reconciliation of the two. He then read Article 30.

Hafez Ramadan Pacha (Egypt) pointed out that the word "procedure" in this article had a somewhat different meaning from the word "attribution" in the French text.

Mr. Fitzmaurice (United Kingdom) agreed that "procedure" has a narrower connotation, and that it is intended that the Court should have power to carry out any task entrusted to it by the Statute.

The Chairman asked the Subcommittee on Articles 26 and 29 to consider also Article 30 with a reconciliation of the texts in view.

The Chairman read the first three paragraphs of Article 31 on national judges. Dr. Abbass (Iraq) said that he believed that the Roman maxim that no man ought to be a judge in his own case was applicable here. He knew that it was argued that national judges were better informed about national problems than a foreigner would be, but he felt that a national judge would be placed in the position of a solicitor rather than a judge. He believed that national judges should always be excluded from cases in which their countries were interested.

The Chairman said that an important question of principle was involved here. He personally was willing to agree that national judges should not be allowed to sit, but he felt that opinion in general was in favor of having a national judge to explain his country's point of view. He thought it was questionable whether a country would be willing to entrust its case to a Court on which it had no national.

Dr. Wang (China) paid homage to*the principle cited by the representative from Iraq but said that if the Court were called upon to interpret a multilateral treaty and national *judges were not allowed to sit, it might be impossible to get a quorum.

The Chairman said that he thought this problem was covered by the next to the last paragraph of Article 31, which provided that several parties in the same interest should be reckoned as one party only.

Dr. Wang (China) pointed out that elsewhere in the Statute it was provided that interested parties might intervene in the case.

Dr. Moneim-Riad Bey (Egypt) called attention to No. 13 of the Court's Rules which provides that, if the President of the Court is a national of a State party to a case, the President should hand over his functions in that case to the Vice President. He felt that the President did not have any more power in the consideration of a case than any other judge and therefore that Rule No. 13 was somewhat in contradiction to Article 31. He thought that account should be taken of the discrepancy involved.

Mr. Fitzmaurice (United Kingdom) thought that there was considerable difference between the position of a judge and of the President of the Court. He pointed out that the President had a casting vote and considerable influence upon the Court's procedure in handling a case. In view of these facts, he thought that the rule ought not to be altered.

*[Corrigenda see p.130]

The Chairman suggested that the rule should be left to the Court.

Mr. Fitzmaurice (United Kingdom) called attention to the fact that the wording of Article 31 might need to be changed if the United Kingdom proposal that persons should be elected members of the Court and should serve as national judges was adopted.

The Chairman asked the secretariat to take special note of this point.

Professor Basdevant (France) declared that national judges were placed in a very difficult position and yet he felt that Dr. Wang's point was well taken. He suggested, therefore, that national judges might continue to sit and take part in the deliberations of the Court but without the right to vote. He thought that this might be an acceptable system.

Dr. Abbass (Iraq) said that he realized that this was a very important suggestion. He felt, however, that if national judges were allowed to sit, their views might receive undue attention. He noted that national judges, especially ad hoc judges, usually dissented from the decisions. He felt that these dissents might create bad feeling.

Minister Camillo de Oliveira (Brazil) said that he was ready to support Professor Basdevant's proposal if he wished to make a motion.

Dr. Moneim-Riad Bey (Egypt) suggested that this matter might be referred to the subcommittee considering the nomination and election of judges. He said that he would also like to have that subcommittee consider Rule No. 13 on the position of a President.

M. Nisot (Belgium) declared that he did not wish to commit himself at this time but he asked whether a judge who is not permitted to vote remained a judge for purposes of reckoning a quorum.

The Chairman said he thought a judge who was not allowed to vote became, in effect, an assessor. He said he thought it was questionable whether countries would be willing to entrust cases to a Court composed wholly of non-nationals. The United States might be willing to do so, but others might not. He said that the subcommittee considering the nomination and election of judges might consider this proposal and make recommendations if it wished. He then read the last three paragraphs of Article 31 and asked the pleasure of the Committee on the whole article.

M. Star-Busmann (Netherlands) stated that he was greatly impressed by Professor M. Basdevant's observation, but he thought that the votes of national judges actually canceled one another. He suggested that some concession had to be made to human nature, and he therefore perferred to maintain the system allowing *ad hoc* judges to vote.

M. Jorstad said he thought that without *ad hoc* judges countries might hesitate to send cases to the Court. Dr. Badawi (Egypt) suggested as a compromise that in case one of the national judges decided to sit without casting a vote the other national judge should not vote.

The Chairman felt that this would circumscribe the freedom of action of the judges. He declared that national judges do not always vote in favor of their countries, and he cited two cases to which the United States had been party in recent years in which the decisions had been unanimous. These were the North American Dredging Co. case between Mexico and the United States, and the Cayuga Indian case between Canada and the United States. He thought that having an *ad hoc* judge without the right to vote would be very little solace to those who believed that national judges served a useful purpose. In the absence of a motion he assumed that there was agreement to allow Article 31 to stand.

Dr. Abbass (Iraq) said that he wished to make a motion that national judges be eliminated.

Professor Spiropoulos (Greece) seconded the motion and said that he was much impressed by the views of Professor Basdevant. In practice, *ad hoc* judges of the Permanent Court had voted in favor of their countries. The Chairman's examples were not cases which had come before the Court. National judges were undoubtedly in a difficult position, but he called attention to the fact that every country would like to have a judge upon the Court though of course all could not do so. He felt, therefore, that the institution of *ad hoc* judges should be retained.

Sr. Dihigo (Cuba) said that he was impressed by Professor Basdevant's proposal. An *ad hoc* judge knew that he had been appointed to defend the position of his country. A national judge, who was a regular member of the Court, was in an even more difficult position. He, therefore, proposed a motion along the lines of Professor Basdevant's suggestion.

The Chairman pointed out that the motion of the representative of Iraq was before the Committee. Mr. Read (Canada) said that he would like to present his country's views that the present practice should stand. He wished to say that if Canada ever had occasion to appoint an ad hoc judge to the Court, that judge would be truly impartial. He called attention to the fact that Canada had signed the "optional clause" and believed that the compulsory jurisdiction of the Court should be broadened. He felt that the effect of the elimination of national judges upon the acceptance of compulsory jurisdiction should be considered. He thought countries might be reluctant to sign the "optional clause' if there were no national judges.

Dr. Abbass (Iraq) agreed with the representative of Canada that national judges should be impartial but pointed out that it was impossible to guarantee that they would be on all occasions. He thought that in order to make the Court thoroughly impartial, national judges should be eliminated.

The Chairman called for a vote upon the motion of the representative of Iraq. There were two votes in favor and twenty-three opposed. The motion was therefore lost.

Ambassador Castro (El Salvador) said that he had been impressed by Dr. Wang's observation about multilateral treaties. He suggested a change in the second paragraph so that it would read "If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party or parties may each choose a person to sit as judge". He thought that this would make the second paragraph consistent with the third.

The Chairman suggested that the subcommittee to which paragraph 2 had been referred might take this into account.

The Chairman then read Article 32. Sir Frederic Eggleston (Australia) suggested that the words "and other officers" should be added in paragraphs 6 and 7. The Chairman suggested that this proposal should be referred to the subcommittee considering Article 22. He then read Article 33 which was accepted without discussion.

The meeting adjourned at 1 p.m.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 65(22)
G/52
April 19, 1945

CORRIGENDUM OF SUMMARY OF FOURTH MEETING (REVISED)

On page 10, line 18, delete "paid homage to" and substitute "appreciated".

On page 10, line 20, delete "and national judges were not allowed" and substitute "and judges who are nationals of the parties were not allowed".

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 30
G/22
April 12, 1945

SUMMARY OF FIFTH MEETING

Interdepartmental Auditorium, Conference Room B
Thursday, April 12, 1945, 10:30 a.m.

Present at the meeting were the following representatives of the United Nations:

United Kingdom: Mr. G. G. Fitzmaurice, Chairman Pro Tempore
Australia: Sir Frederic W. Eggleston (Alternate)
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Minister A. Camillo de Oliveira
Canada: Mr. John E. Read
Chile: Ambassador Marcial Mora
China: Dr. Wang Chung-hui
Colombia: Sr. Jose J. Gori (Alternate)
Costa Rica: Dr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
Ecuador: Dr. L. Neftali Ponce
Egypt: Hafez Ramadan Pacha
El Salvador: Ambassador Hector David Castro
Ethiopia: Dr. Ambayé Woldemariam
France: Professor Jules Basdevant
Greece: Professor John Spiropoulos
Guatemala: Dr. Enrique Lopez-Herrarte
Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: The Hon. C. L. Simpson
Luxembourg: Minister Hugues Le Gallais
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Star-Busmann
New Zealand: The Rt. Hon. Sir Michael Myers
Nicaragua: Ambassador Guillermo Sevilla-Sacasa
Norway: M. Lars J. Jorstad
Panama: Sr. Narciso E. Garay
Paraguay: Dr. Celso R. Velázquez
Peru: Dr. Arturo Garcia
Philippine Commonwealth: Dr. José F. Imperial
Saudi Arabia: His Excellency Assad El-Fakih

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Syria. M. Costi K. Zurayk
Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics: Mr. N. V. Novikov
United States of America: Mr. Green H. Hackworth
Uruguay: Sr. Lorenzo Vincens Thievent
Venezuela: Dr. Diógenes Escalante
Yugoslavia: The Hon. Dr. Stojan Gavrilovic

Mr. Fitzmaurice (United Kingdom) was in the Chair, in the absence of Mr. Hackworth. He announced that the Secretary had requested that delegates submit corrections for the summaries of meetings as soon after their circulation as possible.

M. Nisot (Belgium, Alternate) proposed that Judge Manley O. Hudson of the Permanent Court of International Justice be invited to attend the sessions of the Committee in an unofficial capacity. There was no objection, and the Chairman declared the motion carried.

The Chairman suggested that the Committee take up the reports of the several subcommittees which had met the previous afternoon to consider particular articles. He read the report of the subcommittee dealing with Articles 22 and 28. Professor Golunsky (Soviet Union) suggested that perhaps the reports should not be considered until after the members of the Committee had had time to study them. The Chairman agreed that consideration by the Committee of the subcommittee reports should be postponed to a later session.

In explanation of one committee report, Ambassador Castro (El Salvador) pointed out that only the first paragraph of Article 22 was contained in the report but that it was meant that the second paragraph should stand without change.

The Chairman suggested that the Committee move on to Chapter II of the Statute, on Competence, and, in particular, Article 34. Pointing out that it was necessary, of course, to substitute a reference to The United Nations for that to the League of Nations, he called for discussion on the principle of Article 34--namely, that only States and not individuals could be parties before the Court.

Mr. Jessup (United States, Adviser) inquired whether it was the appropriate time to consider the United States proposal to add a second paragraph to Article 34, providing that the Court might request information from public international organizations and should receive information proffered by them. The Chairman indicated that discussion of the proposal was in order.

The American suggestion read.

> "The Court may, subject to and in conformity with its own rules, request of public international organizations information relevant to cases before it, and it shall receive such information voluntarily presented by such organizations."

Mr. Hamadan Pacha (Egypt) questioned the need for the second part of the proposal, to the effect that the Court should receive information presented to it.

The Chairman called attention to the last part of Article 26 of the present Statute, "In Labor cases, the International Office shall be at liberty to furnish the Court with all relevant information", and explained that the second part of the American proposal was probably meant to embrace that provision relating to the I.L.O., thus permitting organizations to offer information without a previous request from the Court.

Professor Spiropoulos (Greece) thought it clear that if the Court had a right to request information it could receive information, and he favored striking out the second part.

Minister de Oliveira (Brazil) thought there was less difficulty with the clause if the word "voluntarily" were stressed in connection with "presented" rather than "shall receive", in the clause reading "shall receive such information voluntarily presented."

M. Nisot (Belgium, Alternate) suggested that the word "voluntarily" was a source of confusion and should be eliminated.

Sir Frederic Eggleston (Australia, Alternate) incuired whether the paragraph meant that such information furnished by international organizations should be treated by the Court as evidence. If so, he thought it introduced an innovation, and raised serious questions.

The Chairman called on Dr. Wang (China) to explain the past practice of the Court with respect to information furnished by the I.L.O. under Article 26.

Dr. Wang said that the information was usually submitted to the Court as a confidential matter and not made public, but that copies were generally furnished to the parties.

Professor Basdevant (France) desired to give his understanding of the American draft, which he thought would answer the objection raised by the delegate from Egypt. Under the first part the Court would take the initiative in obtaining information from international organizations; under the second part the information would be furnished at the initiative of the organizations themselves. Thus there was no overlapping. He suggested that this might be made clearer by substituting the word "spontaneously" for "voluntarily" in the second clause.

Mr. Farris (Canada, Adviser) agreed with Professor Basdevant's interpretation. He thought the second clause might be helped by making it read, "and it shall also receive, etc."

Ambassador Cordova (Mexico) agreed with the Australian representative that the provision raised some serious questions. In the first place, it was not clear what would be included in the term "public international organizations". In the second place, there was the possibility that the Court would receive and rely on information which a party, in a contentious case, would have no opportunity to refute. He wished the United States to explain how this problem was dealt with.

Professor Spiropoulos (Greece) raised a question as to the meaning of "receive" in the second clause. If it meant only that the Court should physically accept the information, it was superfluous, for of course the Court would allow the information to be delivered. It must, therefore, mean that the Court must discuss the information. But the Court would treat the information as it wished, regardless of the words of the Statute, and so the provision really added nothing.

Mr. El-Fakih (Saudi-Arabia) was for following the United Kingdom proposals and making no change in Article 34. Mr. Bathurst (United Kingdom, Alternate) pointed out, however, that the United Kingdom proposals did call for broadening the provision in Article 26 relative to the I.L.O., so as to include any international institution.

Sir Michael Myers (New Zealand), replying to the Australian representative's objection, declared that the Court must and could be trusted not to use information obtained under Article 34 in a manner prejudicial to the parties. He thought it safe to assume that the parties would be given an opportunity to refute such information if they desired. He suggested, however, that "shall receive" be changed to "may receive".

Mr. Fahy (United States, Adviser) observed that the questions concerning the word "voluntarily" had been clarified already by the explanation that there were two aspects--one in which the Court requested information, the other in which organizations offered information on their own initiative. As to the larger problem of how the Court should treat such information, he noted that the proposal required the information to be received by the Court "subject to and in conformity with its own rules". He was inclined to agree with Sir Michael, and to believe that the parties would be adequately protected by the Court's rules. He agreed with Sir Frederic Eggleston (Australia, Alternate) that no court should rely in its decision on information which the parties had had no opportunity to refute. There would, however, be a large mass of valuable information to be had from international organizations, and this should be made available to the Court.

Ambassador Castro (El Salvador) agreeing that the two clauses of the suggested paragraph were not overlapping, thought that "may" should be substituted for "shall" and that the word "such" preceding "information" should be stricken as referring unnecessarily to the first clause.

M. Star-Busmann (Netherlands) declared that the paragraph was sufficiently clear and should now be referred to a drafting committee.

Professor Spiropoulos (Greece) said that if "shall receive" were changed to "may receive", the clause would mean nothing. It would have significance only if "shall" were retained and if "receive" meant "examine"; he would strengthen it by stating expressly that the Court must take into consideration the information thus obtained.

The Chairman suggested that the Committee should endeavor to avoid discussing drafting points, and should seek agreement on principles. He thought the purpose of the American draft was to generalize the existing situation as to the I.L.O.; the present Article 26 merely says that the I.L.O. is at liberty to submit information, and says nothing about what consideration must be given the information by the Court. With reference to the objection of Sir Frederic Eggleston (Australia, Alternate) he pointed out that Article 44 of the Rules of the Court now in effect requires the Registrar to forward to the parties copies of all documents in the case. Under such a rule there could be no question of the Court's considering information of which the parties were unaware.

M. Jorstad (Norway) suggested that this paragraph as to information was being inserted in the wrong place--that it had to do with procedure, not competence, and ought perhaps to go into Article 49.

The Chairman observed that this was a matter for the drafting committee.

Mr. Farris (Canada, Adviser) declared that whether "may" was to be substituted for "shall" was not a mere drafting problem; it was important that organizations such as the International Labor Office should be able to submit information as a matter of right.

Dr. Moneim-Riad Bey (Egypt, Adviser) agreed, as did Dr. Benes (Czechoslovakia).

Dr. Kernisan (Haiti) observed that the consideration to be given information requested by the Court was a matter governed by its own rules, and suggested that the second part of the paragraph should be made to harmonize with that principle. He proposed that it read, "and it shall receive and may consider" such information.

With reference to the first paragraph of Article 34, Sir Michael inquired whether the authors of the United States proposal had considered the advisability of permitting public international organizations to be parties before the Court. He thought there might be cases in which that would be desirable.

The Chairman stated that as he understood the proposals now before the Committee, it was contemplated that only States or members of the general Organization could be parties to disputes before the Court. If it were desired to consider extending the jurisdiction to include either individuals or international organizations as parties, a proposal should be presented to the Committee. Personally, he had doubts as to the desirability of allowing international organizations to be parties; any disputes in which they were engaged were really the disputes of the members, not of the international organization. He suggested, however, that the Committee first finish with the second part of Article 34. Mr. Fahy observed that according to the American proposal the public international organizations would not have less standing before the Court than the I.L.O. now has.

Dr. De Bayle (Costa Rica) called for a vote on a question of principle involved in the debate, namely, whether the Court should be required not only to receive but to consider information from international organizations.

The Chairman agreed. In his view, the first question to be decided was whether organizations should have a right to submit information. If the answer were affirmative, then the question would be what the Court must do with the information.

Dr. Moneim-Riad Bey (Egypt) raised a question as to the scope of the term "public international organizations"--did it include learned academies and the like?

Professor Spiropoulos (Greece) was of the view that the Court would decide this question. He thought that bodies such as the Danube River Commission, dealing with international law, should be included.

The Chairman's understanding was that the term included only those organizations having States as members, and thus excluded scientific societies and other such international groups; the drafting committee might make this interpretation clearer, if there was general agreement upon it. The Chairman then called for a vote on the question whether public international organizations should have a right to submit information, and it was carried in the affirmative.

Mr. Read (Canada) inquired whether the right would extend only to cases in which the international organization had an interest. The Chairman observed that organizations would probably not want to submit information in any cases except those in which they had an interest.

The Chairman then presented the question whether there should be a provision requiring the Court to give consideration to the information. He pointed out that the American draft, which contained no such requirement, followed the present provision as to the I.L.O. in this respect.

Mr. Farris (Canada, Adviser) thought it would be useless merely to require the Court to consider the information; such a provision would also have to specify how long the consideration must be, and so on.

Mr. Hackworth (United States) declared that it would be presumptuous for the Committee to try to control the Court in this manner, giving it instructions as to what it should do with its information.

Sir Frederic Eggleston (Australia, Alternate) again expressed doubts as to the whole paragraph, stating that he would prefer limiting the information to the kinds of public documents which are ordinarily treated as evidence. But at any rate he thought nothing should be done which might tend to elevate the information to the status of evidence. If nothing were said, the Court could deal with the information appropriately by its rules; the Committee should not prejudge the question by requiring such information to be treated in any particular fashion.

The Chairman suggested that a conclusion should now be reached on the question whether the Court should be required to treat the information in a particular way. His own view was that the Statute need not specify, that the Rules of the Court would deal with the problem, and that the Court could be trusted to act properly on the matter. He knew of no difficulty having arisen under Article 26 of the old Statute.

The question was therefore put, whether the paragraph should be left as it stood in the American proposal. It was carried in the affirmative, with the understanding that the Rapporteur would prepare his draft of the existing American proposal in the light of the discussion.

Dr. Gómez-Ruiz (Venezuela, Adviser) declared that it was necessary to make some provision for settling jurisdictional conflicts between international organizations, either in this or some other article.

The Chairman said that the fundamental question was whether the Committee wished to retain the present position that only States may be parties to cases.

Professor Spiropoulos (Greece) thought that it would be dangerous to adopt any other principle.

The Chairman said he thought international organizations might be allowed to request advisory opinions but not to be parties to disputes with States. He believed an organization should not have the right to be a party to a dispute with one of its members.

Dr. Gómez-Ruiz (Venezuela) said he did not wish to open the Court to disputes between international organizations and States but to permit the Court to settle the administrative competence of various organizations, for example, the International Labor Organization and the Economic and Social Council. He did not think that giving organizations the right to ask for advisory opinions would solve the problem.

Professor Spiropoulos (Greece) thought that the Council could settle jurisdictional conflicts, requesting advisory opinions as necessary.

Professor Basdevant (France) suggested that the proposal of the delegate of Venezuela might become important but that in the past the Court had passed on the competence of international organizations by giving advisory opinions. A change would fundamentally change the character of the Court, which at present decides only cases between States.

The Chairman called attention to the arrival of Judge Manley O. Hudson and welcomed him as an observer. Mr. Hudson thanked the Committee for inviting him and offered to give any information which might be helpful. He stated that the President of the Court had deputed to him the honor of representing the Court here and at San Francisco. He expressed regret that President Guerrero and Vice President Hurst were unable to be present and pleasure that Dr. Wang (China) and M. de Visscher (Belgium), who would soon arrive, were among the delegates.

Dr. Gómez-Ruiz (Venezuela) observed that he was not in favor of the system under which the Council decided conflicts of competence between international organizations.

The Chairman suggested that the Committee should return to the problem after considering advisory opinions, for the United Kingdom would propose that international organizations should have the right to ask for advisory opinions.

Sir Frederic Eggleston (Australia, Alternate) said that his Government was in favor of giving international organizations connected with the United Nations the right to bring cases before the Court and would not like to be precluded from raising this point.

Dr. Badawi (Egypt, Adviser) raised a question as to the term "states or members".

The Chairman explained that "States or Members" was used because at the time of the drafting of the Covenant there was some question as to whether certain entities, notably the British Dominions technically were States. He thought the term was of questionable utility now.

Professor Spiropoulos (Greece) felt that there was a contradiction between Articles 34 and 35, since Article 34 said that States could be parties to cases and Article 35 seemed to exclude States not signatory to the Statute.

The Chairman explained that these two articles were virtually unchanged from the present Statute and had created no difficulty in practice.

Dr. Abbass (Iraq) thought that the term "States" would cover both fully sovereign States and States of limited international personality.

The Chairman asked whether there was a motion to strike out the words "or Members". It was so moved and seconded.

Mr. Jessup (United States, Adviser) said that were it not for the general agreement that changes in the Statute should be held to a minimum he would agree with the view expressed by the delegate of Iraq. He pointed out, however, that there had been controversy in this matter of defining a State and he felt that the present wording would do no harm.

The Chairman said that the governing principle had been that the widest possible recourse to the Court should be allowed. He too felt that the provision would do no harm.

Dr. Badawi (Egypt, Adviser) suggested that the phraseology should be "States Members of the United Nations .

The Chairman pointed out that this would be restrictive and would be in conflict with Article 35.

Dr. De Bayle (Costa Rica) thought that Article 34 applied to States which were not members of the United Nations and not parties to the Statute and also to entities which were not States. He inquired whether this was correct.

The Chairman said that the principle involved in Article 34 was that States, but not private individuals or international organizations, might be parties to cases. Article 35 explained to what particular States the Court should be open.

Dr. Abbass (Iraq) said that he felt that Article 34 was satisfactory but that Article 35 should be made to conform with it perhaps by the insertion of the word "other" before "States" in the first paragraph.

Professor Spiropoulos (Greece) thought that it was undesirable to attempt to make rigid definitions in the Statute and that it was also desirable to change the present Statute as little as possible.

The Chairman called for a vote on the question of retaining the first paragraph of Article 34 as it stood in the American proposal. Since there were only three votes against it, this paragraph was retained.

The Chairman then read Article 35 of the American draft proposal. He said he thought there might be some inconsistency between the first and second paragraphs of this article and the Dumbarton Oaks Proposals. In those proposals he believed that the question whether the Court should be open to non-members was to be decided in each case by the Council.

Mr. Bathurst (United Kingdom, Alternate) explained that there were three categories of States mentioned in Article 35--States members of the United Nations, States not members of the United Nations but parties to the Statute of the Court, and States which were neither United Nations nor parties to the Statute. The Dumbarton Oaks Proposals, Chapter VII, paragraph 5, applied only to the second of these categories.

The Chairman agreed that the Dumbarton Oaks Proposals did not prevent recourse to the Court on the part of any State.

Dr. Abbass (Iraq) suggested that the first and second paragraphs might be combined.

Professor Spiropoulos (Greece) suggested that the article should be left as it had been.

Mr. Read (Canada) suggested that the matter might be referred to a subcommittee to put forward a draft which would not be in conflict with the Dumbarton Oaks Proposals.

M. Star-Busmann (Netherlands) said that there was no conflict, for the Dumbarton Oaks Proposals merely settled who might become parties to the Statute.

Mr. Read (Canada) thought that there were two points of conflict. He believed that the Dumbarton Oaks Proposals contemplated that acceptance of the Statute would be limited to the United Nations and to other nations on conditions fixed by the Assembly and Council. The American proposal for the Statute made no provision for the Assembly. He further pointed out that enemy States were parties to the present Statute and that the wording of the American proposal would permit them to be parties to cases.

The Chairman explained that the Court was open to all members of the United Nations and to other States parties to the Statute. The States that might become parties to the Statute were defined in the Dumbarton Oaks Proposals. Article 35 also referred to a third category of States which were not members of the United Nations and not parties to the Statute.

Mr. Hackworth (United States) confirmed the Chairman's view hat there was no conflict between the Statute and the Dumbarton Oaks Proposals.

The Chairman called upon Judge Hudson to explain how the present Statute had operated.

Judge Hudson explained that formal adhesion to the Statute was different from access to the Court as a litigant. The present Statute was intended to open the Court to litigation on the widest possible basis.

Dr. Badawi (Egypt, Adviser) suggested that the provision in the Dumbarton Oaks Proposals should be incorporated in Article 35.

Dr. De Bayle (Costa Rica) pointed out that the Assembly was excluded from action under paragraph 2 of Article 35.

Mr. Bathurst (United Kingdom, Alternate) said that there were really two questions involved here: The

Assembly would decide what States might adhere to the Statute but the Security Council was given the right to decide who might be parties to cases, probably because it was in permanent session while the Assembly was not.

M. Star-Busmann (Netherlands) moved to accept paragraphs 1 and 2 of the American proposal as they stood. This motion was seconded.

Ambassador Cordova (Mexico) suggested that paragraph 2 should be amended so that when the Assembly was in session it should have power to determine who should be parties to cases and the Council should have the right when the Assembly was not in session.

Dr. Wang (China) declared that there was no conflict between the Statute and the Dumbarton Oaks Proposals.

Judge Hudson explained that under paragraph 2 the Council had not set conditions of access to the Court in particular cases. The matter was settled by a general resolution of the Assembly, which laid down conditions for access applicable in all cases.

The Chairman said that if the new Organization followed the same procedure the point raised by the delegate from Mexico would not arise.

Sir Frederic Eggleston (Australia, Alternate) declared that the wording of paragraph 2 permitted _ad hoc_ arrangements in particular cases.

Dr. De Bayle (Costa Rica) suggested striking out the words "in each case" in the Dumbarton Oaks Proposals.

Judge Hudson explained that the Dumbarton Oaks Proposals treated the question of adherence to the Statute while Article 35 dealt with access to the Court.

Dr. De Bayle (Costa Rica) asked why the General Assembly should be allowed to rule in certain cases and not in others.

Ambassador Cordova (Mexico) observed that the second paragraph permitted the Council to lay down particular rules.

The Chairman admitted this possibility but thought it would be safe to assume that the Council of the

Organization would follow the practice of the League. He asked whether the Committee believed it necessary to lay down some direction in this matter.

Professor Spiropoulos (Greece) suggested leaving the paragraph as it stood.

Dr. De Bayle (Costa Rica) thought that the Council would have more authority than under the Dumbarton Oaks Proposals, where the intervention of the Assembly was required in each case.

Dr. Gómez-Ruiz (Venezuela) said that he agreed with the point of view of the delegate of Mexico and proposed a subcommittee to settle this point.

Mr. Bathurst (United Kingdom, Alternate) suggested that there might be inserted in paragraph 2, after the words "Security Council", the phrase "in accordance with any principles which may have been laid down by the General Assembly".

M. Nisot (Belgium, Alternate) called attention to the motion made by the delegate of the Netherlands and declared his support for it.

Professor Basdevant (France) observed that it lay within the power of the Council to determine conditions in particular cases but that the actual practice had not given cause for criticism. He thought that it would be useful to consider why a State was not a party to the Statute. A State would not be a party if it did not wish to be a party or if it had not fulfilled the conditions laid down by the Assembly. The Council could not restrict access to the Court when the Assembly permitted it, but the Council could be more liberal in particular cases. The decision of the Assembly was actually the more important, and the Council could not go against it. The Council furthermore would have to take into account any existing treaties, and it could not prevent access to the Court when a State had a treaty providing for compulsory jurisdiction. He suggested that Article 35 should be accepted as it stood.

Ambassador Mora (Chile) agreed with this view.

Dr. Moneim-Riad Bey (Egypt, Adviser) suggested that the words "in a dispute" should be added after the word "open" in paragraph 2.

Mr. Simpson (Liberia) declared that he agreed with the principle of Article 35 and would like to move its adoption.

M. Nisot (Belgium, Alternate) called attention to the fact that a motion had already been made and seconded that Article 35 should be adopted.

The Chairman called for a vote upon the motion. As twenty-two were in favor, the motion was carried.

The Chairman adjourned the meeting at 1:15 p.m.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 34
G/25
April 12, 1945

SUMMARY OF SIXTH MEETING

Interdepartmental Auditorium, Conference Room B
Thursday, April 12, 1945, 3:15 p.m.

The meeting was opened by the Chairman, Mr. Hackworth. He asked the delegates to make any corrections in the list of names and titles that had been circulated. He also asked the advisers to announce their names and titles when rising to speak, for the benefit of the secretariat.

The secretariat announced that a telephone for the convenience of members of the Committee would be found in the front lobby.

The Chairman proposed continuing with the consideration of the Statute, in view of the fact that not all of the subcommittee reports had been submitted and time would be needed for studying them prior to discussion in the full committee.

The Committee then considered Article 36 of the Statute of the Permanent Court of International Justice, as revised in the American draft. Mr. Hackworth read the text and asked the Committee for observations.

The first delegate to comment was Minister de Oliveira (Brazil). The Minister stated that his Government thinks that the time is right to make an amendment to this article so that the jurisdiction of the Court be obligatory for all categories of disputes enumerated in the article. If this Committee will agree, the optional clause will thus disappear. The obligatory character of this article would be a great step in the United Nations' effort to maintain peace. In 1920, when the first Statute was voted, it was not possible to go further. There were several reasons. One of them, the main one, was that it was thought that there was a contradiction between the obligatory character of the Court's jurisdiction with Article 12 of the Pact of the League of Nations. Article 12 of the Pact of the League of Nations let the solution of international disputes be left up to the parties, who were free to choose a judicial means of settlement or to ask the Council for a decision. That is why this optional clause was inserted. Since 1920 the idea of making the Court's jurisdiction obligatory has greatly advanced. The Minister thought that the San Francisco conference could eliminate Article 12 of the Pact of the League of Nations. He thought it superfluous to stress that by doing this, this Committee will have made a great step in international justice. In case this Committee will so decide, the Minister thought it useful to provide that the jurisdiction of the Court will only apply when the Governments requested. The Government of Brazil wants the last paragraph of Article 36 to be maintained. We must give the Court jurisdiction to arrive at compromises when it has been so provided and when the parties cannot arrive at an agreement. The 1907 Hague Convention permitted the Court to formulate a compromise when only one of the parties asked for it. The jurisdiction of the Court should comprise all cases which the party shall submit to it, and the Court should have jurisdiction unless another international organ has this jurisdiction. In view of Article 14 of the Pact of the League of Nations, Article 36 of the Statute has been interpreted in a restrictive light. The Brazilian Government feels that this question should be elucidated.

Dr. Wang (China) stated that the question of the jurisdiction of the Court was of great importance and that the judicial organ of the United Nations should possess jurisdiction at least in those cases susceptible of judicial settlement, i.e., legal disputes. He noted that at the time of the Committee of Jurists in 1920 the governments were not ready to confer compulsory jurisdiction on the International Court and that the optional clause had been framed as a compromise.

Dr. Wang felt that the exercise of compulsory jurisdiction by the Court would promote the rule of law in international society. He stated, moreover, that public opinion in China strongly favored compulsory jurisdiction for the Court. He noted that the joint statement recently issued by the American Bar Association and the Canadian Bar Association recorded these organizations as being in favor of compulsory jurisdiction.

Dr. Wang observed that 45 out of 51 nations had now accepted the optional clause, though with many reservations, and he felt that now was the time for the change from the optional to the non-optional basis, as a logical step in the cause of world security.

He therefore proposed that paragraphs 2 and 3 of Article 36 be amended to read:

> "The Members of the United Nations and the States party to the Statute recognize as compulsory ipso facto and without special agreement the jurisdiction of the Court in all or any of the classes of legal disputes concerning:
>
> (a) The interpretation of a treaty;
> (b) Any question of international law;
> (c) The existence of any fact which, if established, would constitute a breach of an international obligation;
> (d) The nature or extent of the reparation to be made for the breach of an international obligation."

Professor Bilsel (Turkey) stated that he supported the thesis of the Brazilian and Chinese delegates with regard to the revision of Article 36, which he regarded as one of the most important articles in the Statute. He therefore proposed the following amendment to Article 36:

> "ARTICLE 36
>
> The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations and in treaties and conventions in force. [No change.]
>
> The Members of the United Nations declare that they hereby recognize the jurisdiction of the Court to be compulsory as among themselves in all or any of the classes of legal disputes concerning:
>
> (a) the interpretation of a treaty;
> (b) any question of international law;
> (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
> (d) the nature or extent of the reparation to be made for the breach of an international obligation;

/Present paragraph 3 omitted./

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court. /No change./"

Professor Bilsel stated that the time had come to accept the idea of compulsory international justice. The idea of international justice, he said, has clearly progressed since the time of The Hague Conference, when the idea of an international court had failed. He took this occasion to pay homage to the Central American States who gave us the first example of a Court of International Justice and also to the jurists who created the Permanent Court of International Justice. He noted that the Committee of Jurists had proposed compulsory jurisdiction of the Court but that the Council of the League had not agreed, and that the Assembly had compromised through the optional clause.

Professor Bilsel then stated that the compulsory jurisdiction of the Court had been recognized by nations in treaties and that more than 52 nations have accepted the Statute of the Permanent Court of International Justice. He thought that the establishment of compulsory jurisdiction of the Court would represent a great step forward in international justice. He added, however, that he would not object to leaving this question to be decided at the San Francisco Conference.

The Chairman then recognized Dr. Benes (Czechoslovakia). Dr. Benes stated that the problem of the competence of the International Court was most important but that it was full of political implications. He felt, however, that this Committee as a body of legal experts has the duty to discuss the question of the competence of the Court and to formulate an opinion on this matter from a juridical point of view. It would be up to the San Francisco Conference, of course, to consider such proposals from the political point of view.

Dr. Benes recalled that it had been agreed that the Statute of the ermanent Court of International Justice would be the basis of the deliberations in this Committee; and that it had also been agreed that it was necessary to introduce certain changes in the Statute. In Dr. Benes' opinion, these changes should include the broadening and strengthening of the Permanent Court of International Justice. He stated that Czechoslovakia has always stood for the creation of effective international organizations with the largest possible powers.

Dr. Benes therefore stated that he considered it his duty to associate himself with the proposals of the Brazilian, Chinese, and Turkish delegates. He felt that the Court should have compulsory jurisdiction over all disputes of a legal character. He also felt that the decisions of the Court should be binding. Finally, he thought that the Court should decide whether an international dispute is justiciable.

He noted that Chapter VIII, Section A, Paragraph 6 of the Dumbarton Oaks Proposals seemed to be in accord with this position, in that this paragraph seems to imply that the Court has compulsory jurisdiction in normal cases over justiciable disputes. He also called attention to Chapter VIII, Section A, Paragraph 7 of the Dumbarton Oaks Proposals excluding "domestic" disputes from the jurisdiction of the international Organization. This he regarded as well-founded. He thought that States would welcome it as a guarantee against interference in their domestic affairs. He stated, however, that the Court of International Justice should determine whether a dispute involved a domestic matter.

Dr. Benes concluded by saying that compulsory jurisdiction over justiciable disputes would make the International Court an instrument capable of contributing to the maintenance of international peace.

This he stated was his own opinion and not the opinion of the Czechoslovak Government. He noted that this problem would have to be considered at San Francisco.

Professor Golunsky (U.S.S.R., Adviser) stated that he subscribed to the opinion expressed by the previous speaker as to the very high importance of the question of the competence of the International Court now under our consideration. According to the instructions Professor Golunsky had, however, he did not feel it possible to agree to the arguments, which had been brought forward here, relative to the enlargement of the competence of the Court by making its jurisdiction compulsory for the countries parties to the Statute of the Court.

The delegate of China, he noted, has mentioned here the wishes of some American jurists who pronounced themselves in favor of the compulsory jurisdiction of the Court. Professor Golunsky could also cite reverse views of American lawyers on this matter. In such a field as jurisprudence it is difficult to use statistic methods, but if we nevertheless used them we should probably have to state that the majority of authorities on international law were always inclined in favor of a voluntary and not compulsory jurisdiction of the International Court in cases of disputes between States. In particular, recently a committee set up in the United States in 1944 consisting of prominent international jurists arrived at this conclusion.

It would be much better, Professor Golunsky stated, for the authority of the Court itself if the enlargement of its competence would be effected by the way of the optional clause being accepted by more and more States than if it were achieved by forcible imposing of its jurisdiction upon such States as are reluctant to accept it.

The success of the Permanent Court of International Justice, he said, particularly the fact that all its decisions without exception have been carried out, can, to a large extent, be explained by the voluntary character of the jurisdiction of this Court established by Article 36 of the Statute. This article has proved its vitality. Any attempts to alter it in the sense of making the jurisdiction of the Court compulsory may entail refusals of some States not willing to submit themselves to the jurisdiction of the Court to carry out its decisions. As a result the Court instead of settling the dispute may make matters worse and create a situation which would call for the interference of the Security Council.

Professor Golunsky stated that he supported the principle contained in the former Statute and felt that the Committee should adopt the amended wording of Article 36 as proposed by the United States delegation.

Sr. Rivera Hernández (Honduras) stated that his country desired to make known its wish to contribute to the creation of a new world substantially different from that of the past, a world in which law is above all nations. This hope is exemplified in the proposal that the Court's jurisdiction should be compulsory and those proposals which call for enforcement of decisions.

So long as the decision as to submission of disputes rests exclusively with each power, little or nothing has been gained in the direction of a world under law. He, therefore, proposed that Article 36 of the Statute under discussion be amended to read as follows:

> "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties and conventions in force.
>
> The Members of The United Nations and the States parties to the Statute declare that they recognize as compulsory ipso facto and without special agreement the jurisdiction of the Court in all or any of the classes of legal disputes concerning:
>
> (a) The interpretation of a treaty;
> (b) any question of international law;
> (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
> (d) the nature or extent of the reparation to be made for the breach of an international obligation.
>
> In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.
>
> At the request of an interested party, the Court shall render its decisions with the assistance of the Security Council, of the General Assembly, or of any other qualified organ."

Sr. Ponce (Ecuador) said that he was in full agreement with the points of view of the delegates who had advocated compulsory jurisdiction.

Ambassador Castro (El Salvador) stated that he favored compulsory jurisdiction in justiciable matters. He thought, however, that the Statute as drafted should be acceptable to the various powers and that reservations would be undesirable. He, therefore, reserved the final decision of his country until the San Francisco Conference, but stated that he naturally favored compulsory jurisdiction which had been the attitude of his country since it signed the optional clause.

* Sr. Mora Otero (Uruguay, Adviser) stated that he had heard with satisfaction the different points of view indorsing compulsory jurisdiction. Uruguay had signed the optional clause in 1921 and desired to see maintained ample scope for the settlement of all disputes. The hope of a better world he thought lay in the settlement of legal disputes by judicial means.

Mr. Fitzmaurice (United Kingdom) stated that he sympathized with those wishing the Court's jurisdiction to be as comprehensive as possible. The United Kingdom had signed the optional clause with a few rather unimportant reservations. He thought that if obligatory jurisdiction were put in the Statute it would be necessary to distinguish several classes of States, the first of which would be the members of the new Organization. If they desire to adopt the principle of compulsory jurisdiction, the proper place for doing so would be the Charter of the general Organization. The other class of States includes those not members of the Organization but which may be permitted to adhere to the Statute. He thought it rather undesirable to place compulsory jurisdiction in the Statute since it might prevent other countries from adhering who might wish to do so.

He also had doubts as to the actual value of such a provision. It was in the past a very controversial issue which was settled by the optional clause on the proposal of Brazil. This was a document separate from the Statute and he thought it far more satisfactory than prescribing compulsory jurisdiction in the Statute itself. On that aspect of the matter he was much impressed by the remarks of his Russian colleague. He favored retention of the present Article at this time. If, at San Francisco, it is determined as a part of the security system that justiciable disputes arising between members must be submitted to the Court it may be so provided in the Charter.

Sr. Gómez-Ruiz (Venezuela, Adviser) strongly favored compulsory jurisdiction in cases of a justiciable nature with the exception of cases which are in process of settlement by

*[Corrigendum see p.161]

other means, either under treaties in force or by regional arrangements. He thought that compulsory jurisdiction should apply to justiciable disputes and that questions of jurisdiction should be settled by the Court. In case all States were not in agreement as to the scope of compulsory jurisdiction he thought that reservations should be limited to two categories--first, cases which refer to events taking place prior to a certain date, and second, reservations as to States not regarded as submitting to the jurisdiction of the Court.

M. Star-Busmann (Netherlands) favored compulsory jurisdiction in principle with respect to legal disputes in which the parties do not agree on another mode of settlement. However, he thought that the task of the Committee was to draft a Statute which would describe how, and not when, the Court is to function. The Committee might make a recommendation to the San Francisco Conference on the jurisdictional question but he opposed its inclusion in the Statute. He believed that for present purposes the optional clause should be retained.

Dr. De Bayle (Costa Rica) indicated agreement with the position of Uruguay and indicated his support of any effort in the Committee to give compulsory jurisdiction to the Court.

Dr. Gavrilovic (Yugoslavia) stated that a study of the optional clause, which is a document separate from the Statute reveals that it is almost invariably accompanied by all sorts of reservations. If compulsory jurisdiction were adopted, it would probably result that the Statute itself would be accompanied by various reservations. This he deemed undesirable and indicated agreement with the proposal of the United States.

Professor Spiropoulos (Greece), while noting the great importance of the question, felt that it was political in character and that the discussion should accordingly not be continued at this time.

Dr. Kernisan (Haiti) thought that it was useless and improvident to impose compulsory jurisdiction at this time. The formula of the United States leaves the door open for an orderly development in this direction.

Mr. Ramadan Pacna (Egypt) observed, first, that the essential purpose of a court is to permit parties to litigate rapidly judicial questions before they become complex.

Secondly, these justiciable questions should they be litigated by a court of international justice. Why should we not keep the old Court? Third, Article 36 has restrictions. The first of these is that in the second paragraph the word "pourront" is a restriction. If it is left in, this makes it less valid. Next, the third paragraph is practically useless. The gaps in the article should be filled by this Committee and not left for the San Francisco Conference. We cannot decide the question of compulsory jurisdiction now, but we can make recommendations.

Dr. Lopez-Herrarte (Guatemala) agreed with the representative of China that the world was ready for changes in the direction of achieving real justice. He considered compulsory jurisdiction necessary to compel the attendance of any State without regard to the subject matter.

Whenever a State fears an adverse decision it naturally takes all possible steps to avoid the litigation. When such cases are finally brought to adjudication the submissions are likely to be surrounded by reservations which tend to render the process nugatory. For these reasons alone he favored compulsory jurisdiction.

He also believed that the Court should pass upon specific disputes ex aequo et bono at the request of one of the parties.

M. Nisot (Belgium, Alternate) stated that Belgium has consistently shown by her acts that she is a fervent advocate of the pacific settlement of disputes in the most extensive sense. However, despite his full sympathy for the cause of compulsory jurisdiction, M. Nisot, an expert, considered the question as premature at this early stage of the work of the Committee, when the latter still ignores the constitution of the Court it will finally recommend.

Professor Bilsel (Turkey) said that he was considering the matter in the light of legal rather than political disputes. He had in mind the provision of the General Act of 1928 which was signed by a number of great nations also. Since it had been suggested by Mr. Novikov (U.S.S.R.) and Mr. Fitzmaurice (United Kingdom) that this be deferred for the San Francisco Conference, he was willing to accept the American proposals at this time.

Dr. Abbass (Iraq) said that of the great principles underlying the idea of the international judiciary that of the Court's independence had already been compromised by the inclusion of national judges. He thought also that the great principle of jurisdiction was likewise compromised by the retention of voluntary jurisdiction. He thought that the Statute should be planned in the light of a possible future world government in which jurisdiction would be amended by courts. He said that Iraq favored the principle of a world government.

Dr. Garcia (Peru) said that his country had already accepted the principle of compulsory jurisdiction and that he adhered to the motions on this point that had been made.

Sir Michael Myers (New Zealand) noted that the tendency in the Committee's discussion had been to favor the system of compulsory reference of disputes to the International Court. He recalled that the delegate of Czechoslovakia had pointed out that the Dumbarton Oaks Proposals seemed to foreshadow the establishment of such a system, quoting the language of Paragraph 6, Section A, of Chapter VIII with respect to "justiciable disputes". Sir Michael stated that the Government of New Zealand favors at present the system of compulsory reference of disputes to the Court, although that view is subject to further consideration when the question comes up for final determination at San Francisco. Sir Michael then stated that whatever this Committee may do here, the final determination must necessarily be made at San Francisco and that it is impossible to foretell what that decision may be.

Sir Michael thought that if a system of compulsory reference were adopted at San Francisco, the proper place for it would be in the Charter of the United Nations and not in the Statute of the Court. For that reason, although his Government agree with the view set forth in the Chinese draft, he was not prepared to accept that draft.

Sir Michael then proposed the following motion:

> "That a vote be taken on the question whether this Committee favors compulsory reference of justiciable disputes to the Permanent Court of International Justice or the present optional system; and that a subcommittee be then set up to submit a draft of Ch Chapter II to this Committee for consideration on the basis decided by such vote, and to prepare also a draft on the alternative basis so that both proposals may be placed before the Conference at San Francisco for final determination."

Minister de Oliveira (Brazil) seconded Sir Michael's motion.

M. Jorstad (Norway) stated that the Norwegian Government is in favor of the American proposal to conserve the actual text of Article 36 of the Statute and the optional clause. His Government had accepted the optional clause without any reservation and hoped that the great majority of the States would do the same. They also sincerely hoped that at San Francisco it would be decided that the Charter should provide that if a legal dispute is before the Council, either party should have the right to demand that the case be referred to the Permanent Court for decision, unless another mode of settlement is prescribed by a treaty in force between the parties.

Dr. Benes (Czechoslovakia) then stated that in view of the opinions expressed by the delegates of the United Kingdom, the Union of Soviet Socialist Republics, Yugoslavia, Norway, and the United States of America, and in view of a certain lack of clarity in the Dumbarton Oaks Proposals, that he, like the delegate of El Salvador, would not vote on this issue at the present time, but would reserve his vote for the San Francisco Conference.

Dr. De Bayle (Costa Rica) seconded the motion made by the delegate of New Zealand.

Sir Frederic Eggleston (Australia, Alternate) then stated that his Government had instructed him to vote in favor of compulsory jurisdiction with two or three provisos, as follows:

(1) that the provision for compulsory jurisdiction should be confined to those States who had joined the general international Organization or else the Court;
(2) the provision should cover only clear cases of justiciable disputes, those capable of being settled by reference to an acknowleged principle of law (in this connection Sir Frederic noted that the Court would be obliged to frame a rule, or legislate, in any other type of case, that the Court was not intended to legislate for the whole world but that such rules should be made by appropriate agreements);
*(3) that the decisions of the Court should be confined to matters which are not excluded by virtue of their being within the domestic jurisdiction of a State.

*[Corrigendum see p.161]

Mr. Fitzmaurice (United Kingdom) then suggested that this matter must be left to the San Francisco Conference. For example, he said, if we were to put a general provision for compulsory jurisdiction in the Statute and if the San Francisco Conference should decide against this policy, the Statute would have to be amended. He observed that if the San Francisco Conference decided upon compulsory jurisdiction, this would be put in the Charter of the Organization. Thus, it would not be needed in the Statute of the Court so far as the members of the Organization were concerned. Since non-members of the Organization can only become parties to the Statute of the Court on conditions prescribed by the Organization, it might be assumed that they too would be subject to compulsory jurisdiction if this were included in the Charter. In short, Mr. Fitzmaurice pointed out, the matter was bound to be regulated in the Charter of the Organization in one way or another.

Mr. Fitzmaurice therefore proposed that this provision be left as it now stands in the American draft for the purposes of the Statute and that the problem be decided at San Francisco.

Professor Basdevant (France) recalled that France had always subscribed to the optional clause and to the compulsory jurisdiction of the Court so that this discussion did not affect France's position. States who wished to have disputes with France referred to the International Court therefore have recourse to the Court.

As to the question of providing for compulsory jurisdiction in Article 36, Professor Basdevant observed that States which were not ready to subscribe to this provision would have to accept it if they wished to adhere to the Statute. The question as to whether they should have to accept such a provision is not a legal question, but a political question; and he noted that some of the delegates do not think that it is now possible to obtain such a clause.

Professor Basdevant noted that the text of the Dumbarton Oaks Proposals is not clear and that there is a question as to whether they meant to introduce compulsory jurisdiction.

Professor Basdevant concluded by stating that since this is a political question, he did not think it could be decided here but must be decided at San Francisco. He felt that this Committee could not state that the United Nations are ready to accept compulsory jurisdiction of the Court and that the San Francisco Conference would have to decide this.

Professor Basdevant accordingly proposed that this Committee accept the American text of Article 36.

The Chairman then stated to the Committee that the Dumbarton Oaks Proposals did not contemplate compulsory jurisdiction for the International Court of Justice.

Mr. Adle (Iran) remarked that it was unnecessary to plead the cause of compulsory jurisdiction. As Professor Basdevant had just said, this matter was too important to be decided rapidly. Mr. Adle therefore proposed that the opinion so widely expressed here in favor of compulsory jurisdiction for the Court be presented to the San Francisco Conference in the form of a voeu.

Mr. El-Fakih (Saudi Arabia) asked if Judge Hudson would give his opinion on this problem.

Judge Hudson stated that he appreciated the honor, but that he felt that he was not in a position to make any statement in this regard.

Dr. Woldemariam (Ethiopia) said that he did not agree with the opinion expressed by Professor Basdevant and others with similar views. Dr. Woldemariam felt that when this Committee had been asked to draft a Statute it had not been instructed to exclude any article. The Committee has examined many questions with political implications and has not excluded them. He noted that the governments are not bound by the recommendations of this Committee and felt that it was the duty of the Committee to present its opinion. He did not think that the Committee should postpone anything until the San Francisco Conference. He pointed out that the Committee was trying to perfect an organ of international peace and to modify a Statute which is 25 years old. It was natural that some improvement could be made in the Statute. He observed that no substantial changes have as yet been made in the Statute, and he felt that it would be a disappointment to humanity if the Statute were to go out without the improvement. Dr. Woldemariam thought that we must be a little braver.

He stated that Ethiopia accepts the compulsory jurisdiction of the Court in all of the cases set forth in Article 36 of the Statute, making the reservation that this position is subject to what may be decided at San Francisco with regard to the obligation of other nations in this respect.

Mr. Chief Justice Farris (Canada, Adviser) referred to the quotation by the delegate of China from the recommendation of the Canadian and American Bar Associations to the effect that the compulsory clause should be inserted in the Statute. He noted that the remainder of the paragraph in that recommendation (on page 6 of the statement) provided that in becoming a party to the Statute a State should be permitted to attach reservations to its acceptance of such compulsory jurisdiction, and thereafter withdraw or waive such reservations. Mr. Chief Justice Farris pointed out that this conclusion had been reached only after wide discussion and that these two organizations had realized that the drafting committee would reach a divided opinion. He stated that the present clause was putting the "cart before the horse" and observed that we were reaching a new stage in the world. He felt that the stage of compulsory jurisdiction may rapidly come about and that the Canadian Bar Association was anticipating this by putting the compulsory clause first. It was felt that this recommendation would be the forerunner of the eventual hope of compulsory jurisdiction, and it had been suggested because in effect it gives those objecting to the compulsory feature the same right as under the optional clause through provision for exceptions. Mr. Chief Justice Farris felt that this recommendation was a great step forward but at the same time met the views of those now opposed to the compulsory clause.

Ambassador Cordova (Mexico) said that he was very strongly in favor of compulsory jurisdiction and would vote in that sense. He considered compulsory jurisdiction to be an essential part of the Court. He did not believe that the Committee should be disuaded by the idea that the discussion was political. The Committee had been brought together for the purpose of giving a juridical opinion and he strongly believed that this was the proper time to make the exact recommendations which would from the juridical point of view enable the Court to perform its proper function.

He was not impressed by the fact that there might be reservation here or at San Francisco. The discussion at San Francisco would be political. Here we should not hesitate to draft that kind of document which seems best from a juridical point of view.

The Chairman remarked upon the great importance of the subject, which was one on which reasonable minds might very well differ. He did not believe that he would state the views of the United States at this time and asked whether the Committee wished to vote upon the New Zealand motion. There was general assent.

Ambassador Mora (Chile) stated that he felt unable to vote upon the motion without further study and moved that the Committee adjourn. The motion was seconded by Sr. Gori (Colombia, Alternate) and was adopted.

The Committee accordingly adjourned at 5:40 p.m.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 66(34)
G/53
April 19, 1945

CORRIGENDUM OF SUMMARY OF SIXTH MEETING (REVISED)

Delete the first full paragraph on page 8 and substitute the following two paragraphs:

> Sr. Mora Otero (Uruguay, Adviser) stated that he had heard with satisfaction the different points of view endorsing compulsory jurisdiction. Uruguay had signed the optional clause in 1921, without a time limit and desired to give ample scope for the settlement of all disputes, without distinction between legal or political questions.
>
> The Uruguayan Government thinks that the Court of International Justice should be competent to have jurisdiction in any international dispute that has not been resolved by any other pacific means.

On page 12, the last two lines, delete "excluded by virtue of their being" and substitute "exclusively".

In the first line of page 6, substitute "Mr. Novikov" for "Professor Golunsky".

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 40
G/30
April 13, 1945

SUMMARY OF SEVENTH MEETING

Interdepartmental Auditorium, Conference Room B
Friday, April 13, 1945, 10 a.m.

Present at the meeting were the following representatives of the United Nations:

United States of America: Mr. Green H. Hackworth, Chairman; Charles Fahy, Philip C. Jessup, (Advisers)
Australia: Sir Frederic W. Eggleston (Alternate)
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Minister A. Camillo de Oliverira (Alternate)
Canada: Mr. John E. Read; The Hon. Wendell B. Farris (Adviser)
Chile: Minister Enrique Gajardo (Adviser)
China: Dr. Wang Chung-hui
Colombia: Sr. Jose J. Gori (Alternate)
Costa Rica: Dr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
Dominican Republic: Sr. José Ramon Rodriguez
Ecuador: Dr. L. Neftali Ponce
Egypt: Hafez Ramadan Pacha
Ethiopia: Dr. Ambayé Woldemariam
France: Professor Jules Basdevant
Greece: Professor John Spiropoulos
Guatemala: Dr. Enrique Lopez-Herrarte
Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: The Hon. C. L. Simpson
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Star-Busmann
New Zealand: The Rt. Hon. Sir Michael Myers
Norway: M. Lars J. Jorstad
Peru: Dr. Arturo Garcia
Philippine Commonwealth: Dr. José F. Imperial
Saudi Arabia: Mr. Assad El-Fakih
Syria: M. Costi K. Zurayk
Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics: Mr. N. V. Novikov
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. José A. Mora Otero (Alternate)
Venezuela: Dr. Luis E. Gómez-Ruiz (Adviser)
Yugoslavia: Dr. Theodore Gjurgjevic (Adviser)

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Mr. Hackworth (United States), the Chairman, made the following statement:

"It is, of course, unnecessary for me to stress to my colleagues on this Committee the great loss which this country and its people, and I venture to say the world, have suffered through the death of our beloved President, the great humanitarian and devotee to the cause of peace, security, and justice. It was under his leadership that our people have taken and are taking great strides toward the establishment of a world organization for the promotion of these beneficent purposes. The tribute from us that he would have appreciated most would be the continuation of our labors toward the achievement of the goals which he had so close to his heart. His attitude with respect to unfinished tasks was aptly stated by Mrs. Roosevelt who in her message to their four sons in the Armed Forces, told them that the President had done his job to the end as he would want to do.

When we closed our work yesterday we had all but finished discussion of Article 36 of the proposed Statute for the International Court of Justice. Most of you gentlemen had spoken eloquently and earnestly on the question whether that article should provide for compulsory jurisdiction, should be optional with the countries that become parties to the Statute. This is a time-honored question. It is one to which much thought has been given and on which reasonable minds may well and do disagree.

If we should now follow the course that was in mind when we adjourned last evening, we would take a vote on a motion that was then pending, a motion designed to determine on which side of the question the respective members of this Committee are prepared to stand. I am glad that we did not vote last evening and I trust that we shall not now vote on this particular issue. We have been working together in this meeting for four days; we have been working earnestly and conscientiously; we have made wonderful progress, and we have made that progress in a spirit of frankness, but at the same time in a spirit of complete collaboration and cooperation with but one goal in view; namely, a task well done. I should very much dislike to see us at this particular time take sides on the issue whether we shall or shall not have a compulsory jurisdiction article in the place of Article 36 of the proposed Statute. I should not like to see this group so sharply divided, as the discussions at yesterday's meeting indicated that we might be divided. We have too much to gain by continuing our work to a successful conclusion to permit us to risk the results of such disagreement.

After all, what we are trying to do is to frame a plan for a court which all of the United Nations will be able to accept. None of us would wish that our work should have the result of making it impossible for any state represented here to join in supporting the International Court. The French representative was good enough yesterday to refer with approval to the instructions which were issued to the American delegates to the Second Hague Peace Conference. Let me quote a single sentence from those instructions which were written by a statesman closely associated with the establishment of the Permanent Court of International Justice, Mr. Elihu Root: 'In the discussions upon every question, it is important to remember that the object of the Conference is agreement and not compulsion.'

I think that we are justified in assuming that if the signature of the Statute should involve ipso facto the acceptance of the compulsory jurisdiction of the Court, some States would find it difficult to become a party to the Statute. It should be our purpose to endeavor to have every State look to the Court for the adjustment of justiciable disputes which may not be settled by other pacific means. We should not frighten them away by what they might regard as excessively onerous conditions. Let us remember, also, that if we take a vote here on any question as important as the one we are now discussing and carry one view by a small majority, we have not necessarily indicated the conclusion which will be reached at San Francisco. Moreover, we have agreed that our own report shall be adopted by a two-thirds majority before it is finally accepted for transmission to the Conference at San Francisco. Surely, therefore, what we are seeking is the largest possible measure of agreement.

Personally, I share most sincerely the view of those who expressed the hope yesterday that the compulsory jurisdiction of the International Court may be expanded. It would be my earnest hope that if the Statute is ultimately adopted with the optional clause my country would sign that clause at an early date, and that all of the other United Nations would also sign that clause. But at the same time I cannot rid my mind o the important practical considerations to which I have already referred. I venture to suggest to you as my colleagues on this Committee that just at this time the wisest and the most useful course that we can follow is to proceed on the basis of the existing text of Article 36. At the same time we should record in our report our hope that the optional clause may be widely and quickly accepted, and I should assume that our Rapporteur would include a statement to the effect that a large number of our group favored going a step further at this time along the road toward the acceptance of compulsory jurisdiction."

Dr. Wang (China) spoke as follows:

"May I be allowed to express to our Chairman, the honorable delegate of the United States, and, through him to the American Government and people, our heartfelt condolences for the untimely death of the great American President, Mr. Franklin D. Roosevelt.

We are all profoundly shocked and grieved by this irretrievable loss, not only to the American people, but also to the United Nations.

President Roosevelt has always been regarded as the symbol of freedom and justice. His passing will be mourned by all.

For us, members of this committee, President Roosevelt's unshaken faith in a better world must be an inspiration in our work. We could not pay a higher tribute to this great man than by doing our best to contribute toward the realization of his cherished ideal of an international organization for peace and security based on justice and sovereign equality of all peace-loving nations."

Sir Michael Myers (New Zealand) said that the Committee could ot fail to be impressed by the Chairman's remarks. He recalled hat on the preceding day he had said that nothing that this ommittee might do with respect to the question whether jurisdic- ion is to be voluntary or compulsory can have any final effect, ince the decision would be made at San Francisco. He had been ersuaded not only by the Chairman's remarks, but by statements of ther representatives, that such a decision would be embarrassing o a number of countries because they had received no instructions n this question. He said that not only other countries, but New Zealand, itself, might alter its decision when the matter is taken up at San Francisco. Therefore, he wished to withdraw his motion of the previous evening, and to substitute a motion that a subcommittee be set up to prepare a draft of Chapter II on the existing basis and also a draft on the alternative compulsory basis so that both proposals may be placed before the Conference at San Francisco for a final decision. This motion was seconded by Dr. León De Bayle (Costa Rica).

Dr. Arturo Garcia (Peru) said that the discussion was important because a majority had indicated approval of compulsory jurisdiction. This was bound to have an effect at the San Francisco Conference. He realized, however, that it was difficult for some countries which had not yet decided the question; and, therefore, he accepted the American proposal.

Ambassador Cordova (Mexico) stated that he agreed with the motion of Sir Michael Myers (New Zealand). However, this motion contemplated a single subcommittee to draft both the text embodying compulsory jurisdiction and that based on the American proposal He suggested that there should rather be two committees, one to draft each of these texts. In that way he considered that the Committee would be most certain of presenting the two points of view to the satisfaction of all.

M. Nisot (Belgium) said that he supported the proposal made by Sir Michael.

Mr. Hafez Ramadan Pacha (Egypt) did not consider that two committees were necessary since some members of a single committee could draw up one text and some the other.

Mr. Novikov (Soviet Union) indicated his support of the proposal of the Chairman based on the present Article 36. He thought that there was no necessity for a committee to draw up an alternative text. Such compulsory jurisdiction was absolutely unacceptabl to his Government, which is dedicated to the creation of an effective Court. He was convinced that to impose jurisdiction on States which do not want it would make this realization impossible. He proposed a vote on the Chairman's motion. Mr. Star-Busmann (Netherlands) seconded the motion.

Minister Gajardo (Chile) said that for the same reasons given the previous day by Professor Basdevant (France), and at the present meeting by Dr. Garcia (Peru) and Mr. Novikov (Soviet Union), Chile was ready to adopt the United States proposal. However, his Government was also prepared to support the motion of New Zealand.

Dr. Lopez-Herrarte (Guatemala) supported the amendment of Ambassador Cordova (Mexico). Since there were two points of view, both should be presented by their sponsors without any compromise.

Minister Camillo de Oliveira (Brazil) noted that the San Francisco Conference was free to take such action as it wished, and that there was no disadvantage in this Committee expressing its view.

Sr. Mora Otero (Uruguay) agreed with the motion of New Zealand as amended by the representative of Mexico.

Sr. Dihigo (Cuba) also supported the Mexican amendment.

Mr. Novikov (Soviet Union) said that the matter could be decided only after the American proposal had been voted on.

Ambassador Cordova (Mexico) said that he considered his proposal for two subcommittees to be an amendment to the New Zealand motion and therefore that it should be put to a vote first.

Mr. Novikov (Soviet Union) said that there seemed to have been a misunderstanding. At the outset the Chairman had made a proposal and he had supported it. This should be considered first.

Professor Spiropoulos (Greece) thought that it would be best to accept the United States proposals and leave a final decision for the San Francisco Conference.

The Chairman said that there was a parliamentary difficulty. Mr. Novikov seemed to have offered a substitute motion for the previous motion, and if so, this should be voted on first. He appreciated that the gentlemen who desired compulsory jurisdiction would want an expression of their views, and to this they were entitled. The question was one of method. The report should show that a large number of members felt strongly the desirability of compulsory jurisdiction. For the moment the motion before the Committee was that of Mr. Novikov supporting Article 36 of the American proposal.

Dr. Moneim-Riad Bey (Egypt) thought that Mr. Novikov's motion was a second to a proposal by the Chairman. If this were adopted the difficulty would be solved by leaving the question for the San Francisco Conference.

Sr. Dihigo (Cuba) said the way to avoid a vote here and to leave it to the San Francisco Conference was to adopt the motion of New Zealand as amended by Ambassador Cordova.

Ambassador Cordova (Mexico) thought that it was more than a matter of procedure if the proposal of Mr. Novikov were brought before the Committee, the result would be a decision. He understood the motion of Sir Michael to be a compromise and had therefore supported it. He expressed agreement with the view of Sr. Dihigo.

Professor Basdevant (France) stated that, speaking as Rapporteur, he wished to draw attention to the fact that there were only four more days to complete the work, which was only half finished. He thought that time should not be wasted on questions of procedure, but that the Committee should proceed and make reservations on points of disagreement. He advocated adoption of the United States proposal with modifications only as to form, and an explanation in the report of the large number of views which had been expressed. It should be noted that compulsory jurisdiction was not acceptable at Dumbarton Oaks, but was acceptable to many delegates.

The Chairman said that there were two motions. The first motion submitted by Sir Michael was for one, or perhaps two subcommittees to draft Chapter 2 of the Statute more or less in its present form, and also an alternative draft incorporating compulsory jurisdiction. The other motion was that by Mr. Novikov. He thought that the two points of view could be composed.

Ambassador Cordova (Mexico) asked Sir Michael if he accepted his proposal that there be two subcommittees instead of one.

Sir Michael Myers (New Zeland) answered in the affirmative.

Mr. Fitzmaurice (United Kingdom) thought that the proper course was to take the motion of Mr. Novikov first. Of the two, he preferred this one, and, if voted on first, he would vote for it. However, if the motion from New Zeland were voted on first, he would cast his vote for it.

The Chairman called for a vote on the New Zealand motion as amended, and the motion was carried.

Dr. Garcia (Peru) said that had not voted, and did not understand the motion. Did Sir Michael Myers mean to send two drafts to San Francisco?

The Chairman replied in the affirmative.

Ambassador Cordova (Mexico) said that the subcommittee on the American proposal might take the article as it now appears. The other subcommittee may make a draft containing the principle of compulsory jurisdiction.

Minister Camillo de Oliverira (Brazil) said that if the understanding was that Article 36, as proposed by the United States, were to be submitted to the San Francisco Conference, only one subcommittee would be needed.

Ambassador Cordova (Mexico) remarked that the matter had already been decided in favor of two subcommittees.

Dr. De Bayle (Costa Rica) requested Mr. Novikov to clarify his motion. Did he intend to impose an obligation on the Committee to keep the text as it appeared in the United States proposal?

Sir Frederic Eggleston (Australia) remarked that pending the report of the committees, the article would stand as it now appears. The Chairman said that that was what the proposal meant. Final action would be taken when the draft proposals came back.

Mr. Novikov (Soviet Union) said the procedure of voting was not clear. At the beginning of the meeting, the Chairman had proposed that Article 36 of the American proposal be accepted. He had supported the Chairman's proposal in order that it might be voted on. Some of the ensuing discussion had proceeded on the view that this was an original motion by Mr. Novikov. If the Chairman had changed his view, Mr. Novikov had no objection to having the motion regarded as his own. He felt that the United States proposals, since the text constituted the basis of the Committee's work, should be considered first. This does not exclude amendments which do not change the principle. He understood that the vote on the motion might be lost. It would then be proper to vote on the motion of New Zealand.

The Chairman indicated his understanding that the motion of the representative of New Zealand preceded that of the Soviet representative, leaving him no alternative but to present the motion of the New Zealand representative first. He stated that when he presented the American view he was not making a motion.

Dr. Moneim-Riad Bey (Egypt) declared that he agreed with the representative of Peru that the vote on the New Zealand motion made a vote on the Soviet motion unnecessary. He suggested that two subcommittees might be constituted in accordance with the New Zealand motion.

Sir Frederic Eggleston (Australia) stated his view that a proposal was not a motion and became a motion only when so designated. Once a motion was made, it might be amended, in which case the amendment was voted on before the motion. If the amendment was accepted, the amended resolution was then brought to a vote. He believed that the New Zealand motion was the first motion. As the Soviet motion was a direct negative of this, he thought that it could not be considered an amendment, and he believed that pending the report of the subcommittees, Article 36 of the American proposal stood.

The Chairman asked the Soviet representative whether under the circumstances he would be inclined to withdraw his motion. Mr. Novikov (Soviet Union) assented. The Chairman stated he would announce the appointment of the two subcommittees at the opening of the afternoon session.

Sr. Dihigo (Cuba) stated that he wished to propose an addition to Article 36 and inquired whether it was proper for him to do so at this time. The Chairman suggested that he might present his suggestion to one of the subcommittees. The Chairman then proposed that the Committee turn to a consideration of Chapter III.

Mr. Fitzmaurice (United Kingdom) suggested that Articles 37 and 38 of Chapter II should first be considered. The Chairman indicated that the whole of Chapter II was to be referred to subcommittees in accordance with the New Zealand motion.

Sir Michael Myers (New Zealand) observed that his motion had not been intended to shut off discussion of other parts of Chapter II but had been framed in the belief that the subcommittees might need to take into consideration the whole of the chapter in formulating its recommendations.

Mr. Fitzmaurice called attention to the fact that votes had been taken at a previous session on Articles 34 and 35 which were included in Chapter II.

The Chairman proceeded to read Article 37 and pointed out that the intent of the revision in the American proposal was to preserve treaties which referred to a tribunal to be established by the League of Nations. Since there was no objection to the American proposal, it was approved.

The Chairman next read Article 38 which was approved without objection.

Ambassador Cordova (Mexico) suggested that the Committee might consider the report of the subcommittee on Articles 3 to 13 before proceeding to consider Chapter III of the Statute.

Dr. De Bayle (Costa Rica) declared he would like to suggest that the word "general" be taken out of point 3 of Article 38.

M. Basdevant (France) pointed out that while Article 38 was not well drafted, it would be difficult to make a better draft in the time at the disposal of the Committee. He also called attention to the fact that the Court had operated very well under Article 38. He felt, therefore, that time should not be spent in redrafting it.

Dr. Wang (China) associated himself with the view expressed by M. Basdevant.

The Chairman indicated his belief that it was better to continue the examination of the Statute instead of taking up the reports of the subcommittees at this time. He therefore read Article 39 of the American proposal and called attention to a proposal by the representative of the Soviet Union to rephrase the third paragraph as follows: "If the parties, or one of them, prefer to use in court their own languages, it shall be granted to them".

Dr. Benes (Czechoslovakia) seconded the Soviet motion as did Mr. Simpson (Liberia.)

The Chairman called upon Judge Hudson to explain the operation of Article 39 of the present Statute. Judge Hudson stated that the Court had at various times received requests for the use of other languages and had always granted them. He also called attention to the fact that the paragraph in question had been modified in the revision of 1929, for the original Statute had read: "The Court may at the request of the parties authorize a language other than English or French to be used".

Dr. Wang (China) supported the Soviet proposal, believing it desirable to make the practice of the Court mandatory. Sir Frederic Eggleston (Australia) inquired how the Soviet proposal would affect bilingual countries. The Chairman suggested that the country concerned might choose the language in which it wished to present its case. Dr. Gjurgjevic (Yugoslavia) stated his belief that a country should be allowed to use the language in which it could best express itself.

The Chairman called for a vote upon the Soviet proposal for amending Article 39. It was carried by 26 votes in favor to none opposed.

Ambassador Cordova (Mexico) suggested that Spanish as well as French and English might be made an official language of the Court. He stated that he made this suggestion not out of pride but because so many States used Spanish. Mr. Novikov (Soviet Union) declared his belief that the Soviet proposal solved all practical difficulties and suggested that if another official language were added, this would open the way to many demands for enlarging the number of official languages. Professor Spiropoulos (Greece) declared that there were practical objections to the adoption of three official languages since any increase in the number of such languages would enormously increase the number of translations required. It would be better to have only one official language, but, since there were two, he thought that the number should not be further increased. The Chairman expressed agreement with the views of the representatives of the Soviet Union and Greece. He asked Ambassador Cordova whether the Soviet amendment did not take care of the problem. Ambassador Cordova stated that he did not make a motion along the lines of his suggestion.

The Chairman then read in turn Articles 40, 41, 42, and 43, which were approved without objection. Judge Hudson called attention to the fact that the most recent rules of the Court designated the documents of the Court as "memorials, counter-memorials and replies".

The Chairman next read Articles 44 and 45 which were approved without objection. When the Chairman read Article 46, Sir Frederic Eggleston (Australia) inquired whether it was desirable to give the Court power to sit in camera on its own motion or on that of the parties. The Chairman thought that there might be at some time political considerations which would make desirable sittings in camera. Judge Hudson reported that the language of Article 46 had been debated at considerable length by the Committee of Jurists in 1920. In practice the Court had never excluded the public from its sittings and so far as he knew, the parties had never asked for such exclusion.

The Chairman then read in turn Articles 47, 48, 49, 50, 51, 52, 53, 54, and 55 which were approved without objection.

Sir Frederic Eggleston (Australia) called attention to the fact that the term "deputy", used in Article 55, had not been used in Article 45. There the term employed was "Vice-President". Judge Hudson noted that the French text of Article 55 was clearer and, he supposed, controlling.

When the Chairman read Article 56, Mr. Fitzmaurice (United Kingdom) stated that he would like to point out in connection with Articles 56 and 57 that under these articles there might be one judgment of the Court and half a dozen dissenting judgments. He read paragraphs 83 and 84 of the Report of the Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice as representing the view of the United Kingdom on this question. This Report proposed that each judge should state his views in a reasoned opinion although several judges might, if they desired, concur in one opinion. The Court would then have an expression of the views of each of the judges and the operative judgment of the Court might take the form of a dispositif, stating simply the verdict reached.

The Chairman called upon Dr. Wang (China) to express his view of this proposal. Dr. Wang stated that since the judgment of the majority constituted the judgment of the Court, he thought there was no necessity for the judges composing the majority to give individual opinions. He suggested that such individual opinions might differ slightly in various respects and that such differences might affect the authority of the judgment. Judge Hudson explained that the practice of the Court had been that after an informal exchange of views, each judge prepared a note giving his ideas regarding the judgment. These notes were circulated among all the members of the Court. It frequently happened that when a judge later wrote a dissenting opinion, it bore little relation to the notes which were circulated. He thought that the authority of the judgments was greater if there were a majority opinion and dissenting opinions. He also pointed out that the concurring judges frequently expressed their own individual opinions.

The Chairman stated his view that a multiplicity of opinions would make for confusion. Since there was no objection to Article 56, it stood approved.

The Chairman then read Articles 57, 58, 59, 60, 61, 62, 63, and 64 which were approved without objection.

Mr. Fahy (United States) called attention to Article 56 which declared that the judgment of the Court should state the reasons on which it is based. He asked whether this was in truth a judgment or an opinion. Judge Hudson pointed out that an article in the Rules of the Court set forth the content of the judgment which was not an opinion in the American sense of the term. The Court did not give a majority opinion, using that term in the American sense.

The Chairman asked M. Basdevant (France) to take the chair momentarily.

Dr. Moneim-Riad Bey (Egypt) called attention to the fact that there was an article in the Rules of the Court dealing with appeals and pointed out that Article 60 of the Statute provided that there should be no appeal. Judge Hudson explained that Article 60 declared that the judgment of the Court should be final and without appeal and that the rule to which attention had been called was intended to provide for procedure under agreements between States, providing that appeals from other international tribunals might be carried to the Court. Dr. Moneim-Riad Bey expressed his thanks for this explanation, saying that there might be regional courts established from which appeals might be taken to the Court. He suggested that this point be mentioned in the report of the Committee. Judge Hudson observed that the Statute was flexible enough to permit appeals to the Court from other tribunals if the parties so desire.

The Chairman, M. Basdevant, inquired whether there were any other comments on Chapter III. Mr. Fitzmaurice (United Kingdom) said he would like to suggest a drafting change at the very end of Article 61. The last word of that article was "sentence", a term which was used nowhere else in the Statute. Judge Hudson pointed out that the French text was perfectly clear at this point. Mr. Fitzmaurice suggested that the English text should be made to conform with the French and that the term "sentence" was not suitable since a sentence was a punishment and not a judgment. He suggested that the term "decision" might be used in the English text or preferably "judgment", to conform with the usage in other parts of the Statute. Dr. Wang (China) suggested that the term "judgment" should be used throughout.

The Chairman, Mr. Hackworth, asked whether there were any other suggestions regarding Chapter III. Mr. Novikov (Soviet Union) moved and Dr. Moneim-Riad Bey (Egypt) seconded a motion that the meeting adjourn.

The meeting was therefore adjourned at 12:30 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 45
G/34
April 12, 1945
[i.e. April 16]

SUMMARY OF EIGHTH MEETING

Interdepartmental Auditorium, Conference Room B
Thursday, April 12, 1945, 3 p.m. [i.e. April 13]

The following members of the Committee were present:

United States of America: Mr. Green H. Hackworth, Chairman
Australia: Sir Frederic W. Eggleston (Alternate)
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Minister A. Camillo de Oliveira
Canada: Mr. John E. Read
Chile: Minister Enrique Gajardo (Adviser)
China: Dr. Wang Chung-hui
Colombia: Sr. Jose J. Gori (Alternate)
Costa Rica: Dr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
Dominican Republic: Sr. Jośe Ramon Rodriguez
Ecuador: Dr. L. Neftali Ponce
Egypt: Dr. Helmy Bahgat Badawi (Adviser)
Ethiopia: Dr. Ambayé Woldemariam
France: Professor Jules Basdevant
Greece: Professor John Spiropoulos
Guatemala: Dr. Enrique Lopez-Herrarte
Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: The Hon. C. L. Simpson
Luxembourg: Minister Hugues Le Gallais
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Ster-Busmann
New Zealand: The Rt. Hon. Sir Michael Myers
Norwar: M. Lars J. Jorstad
Peru: Dr. Arturo Garcia
Philippine Commonwealth: Dr. José F. Imperial (Adviser)
Saudi Arabia: His Excellency Assad El-Fakih
Syria: M. Costi K. Zurayk
Turkey: Professor Cemil Bilsel

Union of Soviet Socialist Republics: Minister N. V. Novikov
United States of America: Solicitor General Charles Fahy
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. José A. Mora Otero (Alternate)
Venezuela: Dr. Luis E. Gómez-Ruiz (Adviser)
Yugoslavia: Dr. Theodore Gjurgjevic (Adviser)

Unofficial Representative of the Permanent Court of International Justice: Judge Manley O. Hudson

The meeting was opened by the Chairman, Mr. Hackworth (United States) who stated that at the morning's meeting a decision had been reached to appoint two Subcommittees to consider Article 36. The first Subcommittee would draw up a draft on compulsory jurisdiction and the other Subcommittee would draw up a draft of an optional clause. The Chairman appointed the following as members of the Subcommittee on Compulsory Jurisdiction: The representatives of Brazil, China, Cuba, Iraq, Mexico, and Venezuela. He suggested that the Subcommittee on the Optional Clause be composed of the representatives of Greece, the Netherlands, the Soviet Union, the United Kingdom and the United States. He further suggested that the two Subcommittees might meet immediately after the close of the present session.

The Chairman emphasized the importance of an expeditious conclusion of the work of the Subcommittees. He suggested that finished drafts be prepared to be turned over to the secretarial staff by the evening of the next day, Saturday, April 14. He did not feel that this was a stupendous undertaking and wished to stress the time element since it would be necessary to complete the work of the Committee by the middle of the following week.

The Chairman also proposed that a Drafting Committee be set up, to be composed of the representatives of Belgium, Brazil, Canada, China, Norway, Peru, Turkey, the Soviet Union, the United Kingdom, the United States, with the Rapporteur, Professor Basdevant, a member _ex officio_. He had made an attempt to have this Committee be as representative as possible. Although the Drafting Committee was somewhat large in size, he felt that its composition was not too large for the task to be undertaken. He suggested that the Drafting Committee hold its first meeting at 10 a.m. of the morning of the next day, Saturday, April 14. He proposed that no meeting of the full Committee be held that day in view of the funeral services for President Roosevelt which were to be held at 4 o'clock in the afternoon. The various Subcommittees might meet but their proceedings could be adjourned by 4 o'clock.

The next meeting of the full Committee might be held on Monday, April 16 at 10 o'clock in the morning, the Chairman proposed. It was hoped that all drafts would be completed for consideration by the full Committee by Wednesday of that week. He expressed the hope that the work of the Committee would be successfully completed by the following Friday. However, the schedule might be advanced if the work were rapidly carried forward.

M. Jorstad (Norway) proposed that Judge Hudson be called upon to assist the Drafting Committee. This motion was seconded by M. Nisot (Belgium).

The Chairman indicated that in the absence of any objection, Judge Hudson would be considered as an ex officio member of the Drafting Committee and he was appointed as such.

The Chairman then proposed that the Committee turn its attention to a reconsideration of Chapter IV of the United States Proposals, relating to advisory opinions. (U.S. Jur. 1, G-1, April 2, 1945). He opened the discussion by reading the provisions of Article 65.

Dr. Wang (China) raised a question as to the omission of any reference to the General Assembly. He was inclined to believe that the General Assembly, as well as the Security Council, should have the right to request advisory opinions of the Court, particularly in view of the provisions of Chapter VI, Section b, Paragraph 7 of the Dumbarton Oaks Proposals and the relationship outlined therein between the Economic and Social Council and the General Assembly. Since the General Assembly might be called upon to consider certain juridical questions, it should have the right to request advisory opinions.

The Chairman stated that a reference to the General Assembly had been omitted from the United States Proposals because it had been felt that the General Assembly would not function in an executive capacity. Its decisions would be

*⌜Corrigendum see p.188⌟

rather advisory in character. Situations likely to lead to a dispute would be considered by the Security Council, and that body, if unable to resolve them, would be in a position to request advisory opinions of the Court. However, he saw no objections to granting the General Assembly the same right, provided the requests related to juridical questions. It would be for the Court to determine whether it would render an advisory opinion, and presumably it would declare itself incompetent if the question were not of a legal character. He had no strong conviction on this point.

M. Jorstad (Norway), M. Nisot (Belgium), Minister Gajardo (Chile), and M. Star-Busmann (Netherlands) supported the Chinese proposal.

Dr. Gómez-Ruiz (Venezuela), after indicating his support for the Chinese proposal, expressed the view that it would be advisable for the Court to give advisory opinions, not only at the request of the Security Council or the General Assembly, but also at that of other public international organizations and individual states, provided that the right were regulated to avoid abuse. This matter was related to the previous discussion of the competence of the Court in conflicts of a legal nature between public international organizations brought into relationship with the General Organization. This competence should include not only legal cases but the legal aspects of political questions.

The Chairman felt that this matter was somewhat different from the proposal advanced by Dr. Wang. The motion which Dr. Wang had made to the effect that the General Assembly be given the right to request advisory opinions had been seconded.

Dr. Abbass (Iraq) called attention to the relationship between the question of advisory opinions and that of the compulsory jurisdiction of the Court. Advisory opinions would become unnecessary if the Court were given compulsory jurisdiction as he had advocated. If the compulsory jurisdiction of the Court were accepted, justiciable disputes would ipso facto be referred to it. Failing the adoption of compulsory jurisdiction, he would favor as liberal provisions relating to advisory opinions as possible.

Mr. Fitzmaurice (United Kingdom) felt that the existence of compulsory jurisdiction, far from doing away with advisory opinions, would increase their usefulness. Frequent use of the right to request advisory opinions might be made to avoid actual litigation and to resolve differences before they reached the stage of a dispute. If states were obligated to refer all cases to the Court they might in certain situations prefer to settle their differences at an early stage by the device of an advisory opinion. His views on this matter were conditioned by the United Kingdom proposal on advisory opinions, which he would submit shortly.

Sr. Dihigo (Cuba) expressed his agreement with the United Kingdom Proposals on this matter. However, he wished to raise a minor question as to whether the Court would have the right to refuse to give an advisory opinion. He felt that the Court should be given the right to declare itself incompetent to render an advisory opinion, since if any state were given the right to request such an opinion, the matter might later come again before the Court in the form of a contentious case.

Sir Frederic Eggleston (Australia) thought that although the General Assembly would deal with different matters than the Security Council, it should have an equal right to call for an advisory opinion.

The Chairman put to a vote the motion of the Chinese representative that the General Assembly be given the right to request advisory opinions of the Court. The motion was carried by the vote of 27 in favor and none opposed.

Dr. Gómez-Ruiz (Venezuela) moved that the right to request advisory opinions be granted to public international organizations and to individual states, subject to the right of the Court to decide whether it was competent in the matter.

Sir Frederic Eggleston (Australia) raised a question as to whether these organizations would address themselves directly to the Court or would do so through The United Nations.

Dr. Gómez-Ruiz (Venezuela) indicated that the answer to this question would depend upon the relationship existing between the international organizations and The United Nations. He, however, was inclined to favor a procedure by which the various international organizations might request advisory opinions directly. In response to questions by the Chairman, Dr. Gómez-Ruiz stated that he was referring to public international organizations dealing with matters such as labor, transit, communications, and in general, to all public international organizations that would have special relations with the General Organization.

Professor Spiropoulos (Greece) recalled that the matter under discussion had been dealt with at the meeting of the previous day. In his view, it had been agreed to recommend no change. If these international organizations wished to approach the Court, they would have to act through the medium of individual states, the General Assembly, or the Security Council.

Mr. Fitzmaurice seconded the motion of the representative of Venezuela.

Professor Basdevant (France) explained that the subject before the present meeting was somewhat different from the matter discussed the other day. At that time he expressed his views only as to the competence of the Court to render judgements. Today the subject of discussion was the advisory procedure. In his view, the suggestion of Sr. Gómez-Ruiz merited consideration. Although he had voted in favor of the Chinese proposal, he wished to point out that the right of the Assembly in this matter must be established finally in the Charter of the United Nations. He felt that as the Committee had placed itself on record as favoring the right of the Assembly to request advisory opinions, it might extend the same right to specialized international organizations. The decisions to be taken at the San Francisco Conference would be no more prejudiced in the one case than in the other. The Committee might take the course of specifying in Article 26 the organ which should make the request for an advisory opinion, it might be stated that it would be the Secretary General of the specialized international organization which would transmit the request. The Charter of the General Organization should establish the general rules as to the bodies which might make this request. The text before the Committee would be complete if it foresaw the proper procedure.

M. Nisot recalled that the Dumbarton Oaks Proposals referred to specialized international organizations which were brought into relationship with the General Organization. He presumed that M. Basdevant was referring to such organizations.

Minister Novikov (Soviet Union) objected to granting to individual states the right to apply directly to the Court for an advisory opinion. If such a rule were established there would be danger that the Court would be overloaded by individual applications and would scatter its efforts on minor matters. The function of the Court is not to play the part of a general advisor. The possibility of applying to the Court through the General Assembly would be open to individual states. If they were permitted to apply directly to the Court on important matters, the procedure for dealing with international disputes outlined in Chapter VIII of the Dumbarton Oaks Proposals might be endangered and the work of the Security Council and the General Assembly hampered. He was in favor of the text of Article 26 proposed by the United States, as amended by the adoption of the proposal of Dr. Wang.

Minister Gajardo (Chile) remarked that since the proposal regarding the right of the General Assembly had been approved, it might facilitate acceptance by the representative of Venezuela of the amended version of Article 26. He felt that a practical solution to the question presented by the representative of Venezuela might be to incorporate an appropriate reference in the report of the Committee. A statement might be made to the effect that the representative of Venezuela expressed the hope that when the question was studied at the San Francisco Conference, attention would be given to the procedure by which specialized international organizations would be able to request advisory opinions of the Court through the General Assembly and the Security Council.

Sir Frederic Eggleston (Australia) thought that The United Nations should in each case pass on the question whether an advisory opinion was to be asked of the Court. He also thought it should be made clear that the only international organizations which might request advisory opinions were the permanent ones which had states as members, thus excluding any temporary or ad hoc ones. As to the classes of question on which advisory opinions might be had, he would limit them to those enumerated in Article 36.

M. Nisot (Belgium) added that the Court should have discretion as to whether it would render an advisory opinion in a particular case.

Dr. Gomez-Ruiz (Venequela agreed with Sir Frederic that only permanent organizations, connected with the United Nations and having states as members, should be included, and also that the Court should have discretion. He was more doubtful as to limiting the classes of questions, and favored stating that the Court might consider the legal aspects of political questions.

Professor Spiropoulos (Greece) thought that if states were to be denied the right to ask advisory opinions, international organizations should also be denied the right. The Court's advisory opinions were in effect judgments anyway, since they had always been carried out, and hence the jurisdiction to render them should be restricted.

Dr. Gjurgjevic (Yugoslavia) agreed with the representatives of Australia and Greece and thought caution should be observed in extending advisory opinions.

Sr. Mora (Uruguay) stated his delegation's approval of including the General Assembly in Article 65.*

Mr. Fitzmaurice (United Kingdom) wondered whether the problem was not so intimately connected with the general structure of the Organization that it could not well be decided now. At any rate, he thought any extension of advisory jurisdiction must be safeguarded by confining it to justiciable questions and by denying a state the right to ask an advisory opinion while its dispute was under consideration by the General Assembly or Security Council.

Judge Hudson, who was called upon, declining to express an opinion on the policy question involved, advised the

*[Corrigendum see p.188]

Committee that the Court had several times given advisory opinions to international organizations other than the League, such as the Danube River Commission, the Greek-Bulgarian Exchange of Populations Commission, and the International Labor Organization, all on requests made through the League. All such requests had promptly been transmitted to the Court, he said.

The Chairman observed that it was not yet known what international organizations would be created. He contrasted the orderly procedure of going through the Assembly with the confusion and crowding of dockets which might result from direct requests to the Court. There was no reason now for creating such rights. One might arise in the future, but he thought this Committee should not look too far ahead.

A vote being taken on the question whether the right to ask for advisory opinions should be extended to international organizations generally, the proposal was disapproved by 16 votes to 4.

Articles 66, 67, and 68 were successively read without objection, and were considered approved.

Article 69, incorporating a method for amending the Statute, was read by the Chairman. He noted that the Dumbarton Oaks Proposals contained a provision for amending the general Charter which could be considered in this connection. It had been suggested to him that the reference to ratification by "members" in Article 69 should be changed to "parties to the Statute", to account for parties to the Statute who might not be members of the General Organization.

Mr. Fitzmaurice (United Kingdom) pointed out that Article 69 called for amendment by a majority, with ratification by two-thirds of the members, whereas the Dumbarton Oaks amendment provision called for a two-thirds vote to amend, followed by ratification by a majority. He thought the provisions should be coordinated.

M. Nisot (Belgium) observed that if it was proper to insert a clause dealing with amendment, there should perhaps also be inserted one dealing with the time of taking effect of the Statute.

Mr. Read (Canada) thought the question of amendment should be left to San Francisco, as it would be confusing to have one provision for amending the Statute and another for amending the Charter.

M. Nisot agreed. Mr. Fitzmaurice thought likewise, but suggested the Committee might go on record in favor of having some amending clause.

The Chairman pointed out that Chapter VII of the Dumbarton Oaks Proposals stated that the Statute of the Court should be part of the Charter, so the general amending clause would cover the Statute as well. He suggested that the Rapporteur note the discussion in his report.

Professor Basdevant (France) said he would be willing to do so, but in his view the matter was of such importance that it would be well to include an amending clause in the Statute itself. He had been of the view that the proposed amending clause was excellent as it stood.

Sir Frederic Eggleston (Australia) supported the view that there should be a separate amending clause for the Statute, on the ground that there might be parties to the Statute who were not members of the General Organization and who would be excluded from the amending process of the Charter itself; if they could not participate in amending the Statute, they might have an excuse to drop out.

A vote being taken as to whether there should be a separate amending clause in the Statute, the decision was in the affirmative.

The Chairman then called for a proposal as to the form of the clause.

Mr. Fitzmaurice (United Kingdom) was of the view that the form should be the same as that of the Charter amending clause, but that the clause could not be drafted in advance of the framing of the latter at San Francisco. On the Chairman's suggestion, he put his view in the form of a motion.

Minister Gajardo and M. Nisot (Belgium) thought the text might stand as proposed.

Sir Frederic Eggleston (Australia) proposed that the Charter amending clause be followed with appropriate substitution of the Statute for the Charter.

Dr. Wang (China) seconded the motion of Mr. Fitzmaurice.

On the vote, it was decided that there should be an amending clause for the Statute paralleling that for the Charter, with appropriate verbal changes, and that the framing of the text should await decision at San Francisco.

Sir Frederic Eggleston (Australia) moved that it should be made clear that parties to the Statute would participate in ratification of amendments to the Statute. The motion was carried.

The Committee then turned to consideration of the reports of the Subcommittees which had had particular articles under advisement. Sir Michael Myers (New Zealand) read the proposal of his Subcommittee for the text of Article 1, as follows:

> "The Permanent Court of International Justice established by the Protocol of Signature of December 16, 1920 and the Protocol for the Revision of the Statute of September 14, 1929 shall constitute the principal judicial organ of the United Nations and shall function in accordance with the provisions of this Statute. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals to which States are always at liberty to submit their disputes for settlement."

M. Nisot (Belgium) observed that although the article referred to the Protocols of 1920 and 1929, it did not mention the Protocol of 1945.

Mr. Fitzmaurice (United Kingdom) declared that the Committee was now faced with a perplexing problem. The dilemma was this: On account of numerous existing treaties which referred disputes to the Permanent Court of International Justice, it seemed desirable to continue the present Court as an entity, not merely to follow its Statute. On the other hand, it was difficult to see how the old court could be taken over, revised, and made the organ of a new Organization without the participation of of all the states which had set up the old Court. He had thought that the Committee ought to use the Statute of the old Court as a basis, but ought not to continue the old Court as an entity. The question might have to be decided at San Francisco rather than now, but to avoid prejudging the question, he suggested use of a neutral phraseology for Article 1, eliminating references to the Protocols of 1920 and 1929. M. Nisot approved of Mr. Fitzmaurice's formula.

Minister Novikov (Soviet Union) explained that he had felt in a difficult position in the Subcommittee because his colleagues were agreed on a text which perpetuated the existing Court, and he thought it raised serious problems as to the membership of the new Court with reference to states like Germany and Japan which had belonged to the old one.

M. Nisot (Belgium) was for avoiding discussion of the problem and adopting Mr. Fitzmaurice's suggestion.

Sr. Dihigo (Cuba) declared that the Subcommittee had been motivated by the thought that there might be cases pending before the old Court which should be carried over, and by the desire to recognize the success of the old Court.

The Chairman thought it might solve the problem to refer to the Court in the new Statute as the International Court of Justice, rather than the Permanent Court of International Justice.

Mr. Jessup (United States) thought that this suggestion merely meant accepting one horn of the dilemma, by deciding against continuity. The question was tied up with the general problem of the relationship between the new Organization and the League, and he thought it ought to be deferred until the latter problem was under consideration at San Francisco.

Sir Frederic Eggleston (Australia) believed that the problem of treaties referring to the Permanent Court of International Justice presented the lesser difficulty, and could be solved by renegotiating those treaties. The difficulties respecting membership he thought insurmountable. He favored Mr. Fitzmaurice's proposal.

Dr. Gomez-Ruiz (Venezuela) proposed overcoming the difficulties in regard to treaties by amending Article 37 so that references in treaties to the Permanent Court of International Justice would be treated as references to the new Court.

Sir Frederic Eggleston (Australia) pointed out that this method could not bind parties to treaties who were not parties to the new Statute.

Mr. Fitzmaurice (United Kingdom), to take account of Sir Frederic's point, proposed that Article 37 be amended to read, "When a treaty or convention in force provides for reference of a matter to . . . , the Court will, as between parties to this Statute, be such tribunal". M. Nisot (Belgium) seconded the proposal.

The Chairman inquired what would happen to members of the old Court who did not become members of the new one.

Mr. Fitzmaurice (United Kingdom) declared that in his view this group would inevitably be creating a new Court. It did not matter greatly what became of the old one, which would die a natural death anyway since its election machinery would no longer exist.

Professor Spiropoulos (Greece) was in agreement with Mr. Jessup that the question was political and thought the effect of the war on existing treaties and on the membership of states like Germany was uncertain. He was for deferring consideration.

The Chairman suggested referring the whole matter to the Drafting Committee, including the proposed changes in Article 37, and there was no objection.

A question arose as to a difference between the English and French versions of Article 1 as submitted by the Subcommittee: the English text omitted the words "of arbitration" from the clause of the existing Statute, "and to the special Tribunals of Arbitration to which states are always at liberty to submit their disputes"; the French text did not. Dr. De Bayle (Costa Rica) thought the matter of some importance, and wished to know whether the omission was deliberate. It was explained that it was, the purpose of the Subcommittee being to generalize the existing draft, recognizing that there might be special tribunals other than arbitral tribunals. The matter was entrusted to the drafting committee.

The Committee deferred consideration of the Subcommittee report on Articles 3 to 13 and was adjourned at 5:40 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 69 (45)
G/56
April 19, 1945

CORRIGENDUM OF SUMMARY OF

EIGHTH MEETING

On page 3, the tenth line from the bottom, delete "Chapter VI" and substitute "Chapter V".

Add the following to the sixth paragraph on page 8: "on the matter whether an advisory opinion can be asked by international organizations, he agreed with the recommendations given by the Informal Inter-Allied Committee on the future of the Permanent Court of International Justice".

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D.C.

RESTRICTED
Jurist 57
G/45
April 16, 1945

SUMMARY OF NINTH MEETING

Interdepartmental Auditorium, Conference Room B
Monday, April 16, 1945, 10:15 a.m.

The meeting was opened by the Chairman, Mr. Hackworth (United States), who stated that the Secretary had some announcements to make.

Principal Secretary Preuss requested the representatives to correct any errors in the provisional list of addresses which would be circulated. He pointed out that they had been obtained from various sources and that it would be appreciated if the representatives would make the necessary changes.

The Chairman suggested that in order to complete the work, the program of work might be somewhat as follows:

The Committee might finish the report of the subcommittees today (April 16); the Drafting Committee might complete its work tomorrow, Tuesday (April 17); the Committee might consider the work of the Drafting Committee on Wednesday (April 18) in the morning and the report of the Rapporteur in the afternoon; the principal Committee might have a final meeting on Thursday (April 19) to consider any last changes; and then on Friday (April 20) the Committee might hold a plenary meeting which would complete the Committee's work. This was of course merely a suggestion on the part of the Chairman for consideration by the Committee.

The Chairman stated that the first subject to be taken up was the subcommittees' reports. The first one in order was the report of the Subcommittee on Articles 3 to 13 (Jurist 24, G/18, April 12, 1945). The Chairman stated that since Ambassador Cordova (Mexico) was Chairman of that subcommittee he might indicate what the principal changes suggested by the subcommittee were.

Ambassador Cordova pointed out that the first question considered by the subcommittee was whether the candidates for the Court should be nominated in accordance with the present system, i.e. by "national groups", or whether there

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should be a change, the change consisting of nomination of candidates directly by the governments. This question was decided by the subcommittee in favor of direct nomination by governments. He stated that the subcommittee then took up the question whether the governments should designate only one candidate of their own nationality or, in the alternative, whether they should simultaneously nominate one or several additional candidates of a foreign nationality. The decision of the subcommittee was to recommend that the governments designate only one candidate and that such nominee be a national of the state making the nomination.

The third question which he said the subcommittee dealt with was whether the government nominees should be considered auxiliary members of the Court or whether they should be considered as merely constituting the panel from which the members of the Court would be chosen.

Ambassador Cordova then stated that the subcommittee considered the question of the nomination of judges and decided to retain the provision of the Statute that establishes that the members of the Court be 15 in number.

The next question considered by the subcommittee was whether it should adopt the system of rotation, as proposed by the United Kingdom, whereby only a third of the members of the Court would be replaced at any given time. Ambassador Cordova stated that the subcommittee voted in favor of this system. He then stated that the subcommittee on Articles 26, 27, 29, and 30 had requested the subcommittee of which he was chairman to decide the number of judges which would constitute the chambers of the Court created for dealing with (1) particular categories of cases and (2) summary proceedings. He stated that his subcommittee was of the opinion that the chambers for particular cases should be composed of such number of judges as the Court might decide upon with the approval of the parties and that chambers for summary procedure should be composed of five members.

The Chairman said that in his opinion the first question was whether there should be a departure from the present system of nomination of judges by national groups. He asked whether any member of the Committee desired to speak on this question.

Professor Basdevant (France) stated that he would like to say a few words in favor of maintaining the present system, i.e., nomination of candidates by national groups. He thought that this system was good because it has a broader basis of consultation. If elections are to be made by governments considerations of a political nature at the time might prevent the right person from being elected. Furthermore, the present system has functioned well and he thought that it should be continued.

Dr. Moneim-Riad Bey. (Egyptian Adviser) thought that in choosing judges for an international court the choice must be entirely free from political influence of governments. Political considerations would play a greater part if the nominations are to be made directly by governments instead of by national groups. He thought it preferable that the present system be continued.

Professor Bilsel (Turkey) pointed out that he was a member of a national group for 10 years and that he would support Professor Basdevant's opinion except for two difficulties. Governments change and with them the considerations which motivate the nomination of judges. The nomination of judges must be as free from political considerations as possible. He was of the opinion, therefore, that Mr. Fitzmaurice's suggestion was more practical. However, he wanted to make a reservation with reference to that proposal, i.e., that, prior to nomination, governments should ask the opinion of national groups.

Mr. Fitzmaurice (United Kingdom) expressed the view that nomination by governments is by far simpler and less cumbersome. The only real objection which he had heard expressed by members of the Committee was that political influence might be introduced if it were allowed that judges be nominated by governments. However, since every government is going to nominate only one person it would not be reasonable to assume that the government would choose a person devoid of the qualifications of a judge merely on the basis of political considerations. As a matter of fact it is more reasonable to believe that governments would choose the person best qualified to be a judge.

Dr. Kernisan (Haiti) thought that the present system should be maintained. The national groups called upon to make nominations under the present system are created a long time before election time. Their choice is based on the competence of judges. If nominations are to be made directly by governments the choice may be influenced by the political considerations of the time. He was, therefore, in favor of continuing the present system.

Dr. Moneim-Riad Bey (Egyptian Adviser) read a statement from a pamphlet entitled "The International Court of the United Nations Organization, A Consensus of American and Canadian Views", strongly supporting the present system of nominations. He stated that the Committee could be grateful for this statement by an impartial group of lawyers. The method of elections by national groups has worked smoothly for 11 elections. He asked whether the experience of 11 elections should be sacrificed for what is called more practical considerations. Nationality is not important in the nomination of judges by national groups. Furthermore, he was of the opinion that national groups should be allowed to elect non-nationals; that each government should consult its highest courts and law faculties; and that if the system is changed governments should consult those bodies.

The Honorable C. L. Simpson (Liberia) stated that it was the feeling of his Government that the present system should be maintained. Political influence would play a lesser role than under the proposed new system of direct nomination by governments.

M. Jorstad (Norway) expressed the view that the present system was preferable. In nomination by national groups political considerations do not play any prominent part. Judges * elected by governments would be more likely to be influenced by those governments.

* Dr. Wang (China) expressed the view that judges should be nominated by governments and that, as suggested by the Turkish representative, the governments should consult the highest courts and certain other persons with respect to the nominations.

Sr. Mora Otero (Uruguay) was in favor of the present system which has worked well so far.

The Chairman stated that by this time the Committee will have understood that the United States is in favor of the present system. Under the proposed new plan governments would be confined to nominating their own nationals. He thought that the new plan might be open to the following objection: Suppose there is a national of country A on the Court and that a vacancy occurs on the bench. In such a case state A would not be able to make any nomination if a state is to be limited to nominating only its own nationals. Furthermore, a country may want to nominate a national of another country especially if it feels that its own national may not have a chance of being elected. The proposed new plan would restrict the freedom of action of governments. There would also be another objection to the proposed new plan. Assuming, for the sake of argument, that there is a vacancy of a national

*⌈Corrigendum see p.203⌉

from state A, nothing would preclude the election of another national from A if A is to nominate only its own nationals. This would have been avoided by a provision of Article 10 which had been omitted in the submitted draft. This provision was intended to prevent the election of two judges from the same country.

Mr. Fitzmaurice (United Kingdom) observed that only the initial election was borne in mind in omitting the provision referred to by the Chairman. If the proposal of the United Kingdom were to be approved there would have to be included a provision which would prevent two judges from the same country. He suggested that there were two points to be considered by the Committee. One, who is to make the nominations; the other, who should be nominated, i.e., whether a national or a national plus one or more non-nationals. He thought that those two points should be considered separately.

The Chairman stated that he would like to read the following excerpt from Mr. Elihu Root's speech in the 1920 Committee of Jurists regarding the system of nomination of judges:

> "If the governments were entrusted with the preparation of the lists of candidates and also carried out the elections upon these lists the Court would differ but little in character from the Council of the League of Nations. The Court would be a political body founded on political considerations; a body representing the various governments, instead of a body composed of picked and specially qualified men entrusted with the administration of justice regardless of any national consideration." (Procès-Verbaux, p. 421)

The Chairman then asked whether the Committee was ready for the question whether there should be any change as to nomination and election of judges. The count of a show of hands revealing a close vote, Ambassador Cordova requested that the roll be called.

Mr. Read (Canada) stated that he could not vote as a representative of the government. He would like to register his vote only as a jurist giving his own personal view.

Ambassador Castro (El Salvador) stated that instead of calling the various countries the Chairman should call persons as experts and not as representatives of their country.

Minister Novikov (Soviet Union) stated that according to his recollection the Committee had decided at the beginning of its sessions that a decision should be by a two-thirds vote. The Chairman explained that the two-thirds vote related to the final action and that decisions during the Committee's discussion could be taken by majority.

Dr. M. Moneim-Riad Bey (Egyptian Adviser) stated with respect to the observations of the Canadian representative that the Committee had decided at the beginning of its sessions that the opinions of the various persons were to be given as the opinions of jurists and not of persons as representatives of governments.

The Chairman stated that the representatives could not bind their governments. The question before the Committee was whether there should be any change in the present system with respect to the election of judges. The question was then read in French and the Committee was asked to state whether there was any need for Spanish translation of the question. There being no request for such translation the Chairman called the names of the various countries which voted as follows:

Australia:	No change
Belgium:	No change
Bolivia:	Absent
Brazil:	Change
Canada:	No change
Chile:	Absent
China:	Change
Colombia:	Not voting
Costa Rica:	Absent
Cuba:	No change
Czechoslovakia:	Change
Dominican Republic:	No change
Ecuador:	Change
Egypt:	No change
El Salvador:	Change
Ethiopia:	No change
France:	No change
Greece:	Not voting
Guatemala:	Absent
Haiti:	No change
Honduras:	No change
Iran:	Change
Iraq:	Change
Liberia:	No change
Luxembourg:	Absent
Mexico:	Change
Netherlands:	Change

New Zealand:	Change
Nicaragua:	No change
Norway:	No change
Panama:	Absent
Paraguay:	Change
Peru:	No change
Philippine Commonwealth:	Absent
Saudi Arabia:	Not voting
Syria:	Change
Turkey:	Change
Union of Soviet Socialist Republics:	Change
United Kingdom:	Change
United States of America:	No change
Uruguay:	No change
Venezuela:	Not voting
Yugoslavia:	Change

The votes were 16 for change and 16 against change. The Chairman announced that since there was a tie the motion must be considered as lost.

The Chairman thought that if, as the vote indicated, the present system was to be maintained, the next proposed changes as to elections became moot because the question that had been voted upon was whether there should be any change and the motion had been lost. He stated that the next thing was to refer to the Drafting Committee Articles 3 to 13.

Dr. Arturo Garcia (Peru) suggested that since the Colombian representative was to arrive momentarily the decision of the Committee be delayed.

The Chairman stated that the votes are counted as of the time of voting.

Mr. Fitzmaurice (United Kingdom) stated that he would like to have a special reference in the report to the fact that the Committee was evenly divided and that some of the representatives were absent. He also suggested that the report contain a specific statement to the effect that this important question should be reconsidered by the San Francisco Conference.

The Chairman stated that the Rapporteur could make a record to that effect.

The Chairman, therefore, proposed that the Committee continue with Jurist 44, "Proposals of the United Kingdom on Articles 3 to 13." Mr. Fitzmaurice (United Kingdom) called attention to the fact that this document should not be called "Proposals of the United Kingdom", for it was the result of the deliberations of the Subcommittee Dealing with Articles 3 to 13. He had prepared the draft as a result of the deliberations of the subcommittee, but he did not wholly agree with the recommendations reached.

Hafez Ramadan Pacha (Egypt) stated that he would prefer to have the number of judges increased rather than decreased. He thought that it would increase the prestige of the Court to have a larger number of countries represented upon it. He realized that there might be some practical difficulties in increasing the number, but he called attention to the fact that this was not an ordinary body. He suggested that the decisions of a larger court might be more acceptable.

Mr. Simpson (Liberia) declared that the number of judges was too large and believed that nine would be adequate.

Dr. Abbass (Iraq) stated that he sympathized with the point of view expressed by the representative of Egypt as it was desirable to have the principal legal systems of the world represented on the Court.

M. Star-Busmann (Netherlands) stated that he was strongly in favor of nine judges and believed that they should not be regarded as representing countries.

Ambassador Cordova (Mexico) reported that the subcommittee had recommended 15 judges because a smaller body might not adequately represent the principal legal systems of the world and because it hardly seemed desirable to lessen the opportunity of the smaller nations to be represented on the Court. Furthermore, the present number of 15 was reached after experience, and a smaller number might not be adequate for the increase in the activity of the Court which might be expected.

Dr. Wang (China) stated that no difficulties had arisen with a Court of 15 judges. Delays in the Court had not been due to the number of judges.

Ambassador Castro (El Salvador) suggested that the number 15 should be retained, pointing out that the United Kingdom had suggested 9 and Turkey 20, and 15 might, therefore, be a compromise. Furthermore, 15 might facilitate the work of chambers which would speed the work of the Court. He thought that nine would not give broad enough representation on the Court.

Professor Bilsel (Turkey) stated that, if the number were reduced to nine, the principal legal systems of the world would not be represented. He called attention to the fact that the Committee of Jurists in 1929 might have reduced the number to 9 but instead increased it to 15. He felt that wider representation would awaken greater confidence.

Dr. Gjurgjevic (Yugoslav Adviser) stated that he would like to know whether the United Kingdom's proposal, that candidates who were not elected judges of the Court should be members of it, would be accepted. If it were not, he thought that the number of nine would be too small and that the Court would have difficulty in carrying on business.

Professor Spiropoulos (Greece) called attention to the comments of the Government of Poland on the Report of the Inter-Allied Committee on the Future of the Permanent Court of International Justice. Poland had pointed out that in the early years the number of 11 judges had proved insufficient and a quorum had been maintained only by calling on the deputy judges. Fifteen judges had, therefore, been the effective number, and the 1929 revision had established it as the membership of the Court. Fifteen seemed to be necessary to enable the Court to run smoothly, and a reduction in the number seemed impracticable.

Hafez Ramadan Pacha (Egypt) noted that the jurists had visited the Supreme Court of the United States which had nine judges for one country. He called attention to the fact that in Egypt special cases were handled by a court of 16. He noted that a court of international justice should have a fairly large number of members and would have more prestige if itdid.

Dr. Kernisan (Haiti) stated that he favored maintaining the number of 15. National courts often had 9, and therefore it did not seem excessive to have 15 for an international court, especially as this might give the Court more prestige and make it more representative of different systems of law.

Judge De Visscher (Belgium) noted that there were two points to be considered. The first was the desirability of enlisting wide support and interest in the Court. The second consideration was technical, for too many judges could hamper the operation of the Court. He, himself, had sat with a court of 15 which had worked satisfactorily, and he thought that 15 permitted the close cooperation between judges which was desirable.

At the request of various members Judge Hudson stated that he would not speak on the question of policy but would bring out certain practical questions. He stated that he agreed with the views of Judge De Visscher. There were essentially two questions involved here. One was how many judges should be members of the Court, and the second how many should sit at a given time. He thought that Article 3 dealing with the number of judges was closely related to Articles 23, 24, and 25. He understood that Article 25 had already been accepted. This provided for a full court of 11 with a quorum of 9 and permitted judges to be dispensed from sitting. He pointed out that there were four possible reasons why all of the judges might not be present. One or more of the places might be vacant; one or more judges might be on leave; a judge might be excused because of previous participation in the case; and others might be ill or otherwise prevented from attending.

The Chairman called for a vote on the question of maintaining the number of judges at 15. The motion was carried by 28 votes to 4.

The Chairman next directed attention to the proposal for a system of rotation whereby only a third of the members of the Court would be replaced at any given time. He pointed out that the American proposal attempted to avoid complete replacement of the Court at any one time by doing away with elections to fill unexpired terms. He asked for a vote on the proposal of a system of rotation. Twenty-six voted in favor of this, with no negative votes.

Judge Hudson raised the question as to when the lot should be taken to determine retirement of judges. He thought that it would be desirable to have it taken in the beginning of the term since this might affect the practical working of the Court. Dr. Abbass (Iraq) pointed out that a judge could finish a case which he had begun. Sir Frederic Eggleston (Australia) suggested that after the first election the number of judges to retire in 3, 6, and 9 years respectively should be settled. A motion to this effect was made and seconded. Fourteen voted in favor and none in opposition. The motion was therefore carried, and the attention of the Drafting Committee was directed to this point.

The Chairman next presented for a vote the question of concurrent election by the Assembly and the Council. Seventeen voted in favor and eight in opposition. The proposal therefore was carried.

The next question was whether the provision in Article 6 of the existing Statute providing for consultation with courts and legal faculties should be made mandatory. The subcommittee had not recommended that an obligation to consult be inserted. Since no opposition was voiced, the Chairman declared that Article 6 was approved without change.

The next question, the Chairman said, was the number of judges on chambers. Sir Frederic Eggleston (Australia) asked whether the chamber of summary procedure could sit at the same time as the full Court. Judge Hudson pointed out that there had been little use of chambers and that the question had never arisen. He pointed out that under the present Statute the Court elected members to chambers for a given term of years and that the parties did not decide the number or the composition of the chambers. He thought the subcommittee was proposing a wholly different system when it provided for ad hoc appointment of chambers with the approval of the parties. He called attention to the fact that there might be treaties providing for the reference of cases to existing chambers.

Mr. Read (Canada) explained that the subcommittee had had in mind the action of the full Committee regarding chambers and had thought it desirable to permit flexibility in the establishment of chambers, especially in case a chamber should find it useful to visit a certain locality.

Ambassador Cordova (Mexico) thought that chambers could not be established in advance. He pointed out that the Court was to be given the power to fix the number to sit in the chambers and the parties given the opportunity to approve this arrangement.

The Chairman suggested that the question might be subdivided into a question whether there should be freedom of action in making appointments to special chambers and whether the number in the chamber of summary procedure should be specified.

Judge Hudson suggested that perhaps he had misunderstood the recommendation. He thought that under the recommendation it would be possible to create chambers ad hoc or in advance. He thought that there might be an advantage in having ad hoc chambers if the number of judges available fell below a quorum for the full Court.

Dr. Moneim-Riad Bey (Egyptian Adviser) thought that the Court should not be allowed to change its character if it had started a case. He thought it would be better to have predetermined chambers and to have a minimum membership in chambers stated in the Statute. He wished to avoid the possibility of a chamber composed of only one judge of the Court.

The Chairman put the question whether there was any opposition to leaving it to the Court to determine the number of judges in a chamber. There was none.

He next asked whether there was opposition to fixing at five the number in the chamber of summary procedure. There was no opposition. He suggested that these matters might be referred to the Drafting Committee. A motion to this effect was moved and seconded and carried by a vote of 28 in favor, with no opposition.

The Chairman next called for the Report of the Subcommittee Dealing with Articles 22 and 28 (Jurist 20).

Ambassador Castro (El Salvador) reported for this subcommittee that the subcommittee recommended no change in the second paragraph of Article 22 but recommended an addition to paragraph 1 of Article 22 to permit the Court to hold sessions and render valid decisions elsewhere than at The Hague. A similar change was introduced in Article 28 regarding chambers.

Justice Farris (Canada) raised a question whether the word "valid" cast doubt upon other decisions of the Court. Minister Camillo de Oliveira (Brazil) also noted that some doubt might be aroused. The Chairman said that question had been raised in earlier sessions whether the Court could render valid decisions elsewhere since its seat was established at The Hague. He suggested that the question whether the word "valid" should be removed should be referred to the Drafting Committee. The report of the subcommittee was then approved with the provision that the Drafting Committee examine the desirability of including the word "valid".

The Chairman next directed the attention of the Committee to the Report of the Subcommittee on Articles 26, 27, 29, and 30 (Jurist 23).

Mr. Bathurst (United Kingdom), Rapporteur of this subcommittee, explained its report. The subcommittee recommended that the provisions in Articles 26 and 27 for labor, transit, and communication chambers should be replaced by a general provision permitting the Court to establish chambers to deal with particular cases or particular classes of cases. The subcommittee further recommended that Article 27 should be the old Article 29 with a slight grammatical change. Article 28 would be a consolidation of certain provisions from the old Articles 27 and 28 and the relevant recommendation of the subcommittee dealing with Articles 22 and 28. Article 29 would provide that the Court should make its own rules and might provide for an appointment of assessors. The subcommittee considered that there was no need to make special mention of rules for summary procedure.

Ambassador Cordova (Mexico) said that he had been impressed with Judge Hudson's views on the desirability of having fixed chambers and that it might be desirable to distinguish between ad hoc chambers in which the number of judges was left open and chambers to deal with particular classes of cases for which the number of judges might be fixed.

Judge Hudson raised the question whether the use of the terms "such as" in the subcommittee's draft of Article 26 was restrictive. Mr. Bathurst (United Kingdom) said that "such as" was intended to introduce examples and that it qualified only particular categories of cases. It has been considered desirable to mention labor cases and cases relating to transit and communications since they were mentioned in the old Statute.

Judge Hudson suggested the desirability of adopting Ambassador Cordova's suggestion regarding chambers. He also pointed out assessors to sit with the full Court had never been demanded by the parties.

Dr. Moneim-Riad Bey (Egypt) felt that it was necessary to distinguish between pre-existing and ad hoc chambers and to fix a minimum number of members for chambers.

Justice Farris (Canada) suggested that the words "such as" might be replaced by the words "for example".

Professor Basdevant (France) stated that he had some observations to make with regard to the French text but perhaps these might be made in the Drafting Committee.

The Chairman explained that in the American proposal an attempt had been made to keep the same order as in the original Statute and to preserve the same numbering of the articles.

Mr. Bathurst (United Kingdom) stated that the change had resulted from the consolidation of Articles 26 and 27. The only point left in Article 27 related to assessors and the subcommittee had felt that it was desirable to bring the various articles dealing with chambers into closer relation with one another.

Judge Hudson pleaded for the retention of the old numbering system in order to facilitate the use of the literature on the Court's activities.

Sir Frederic Eggleston (Australia) suggested that this matter might be considered by the Drafting Committee. Dr. Moneim-Riad Bey (Egypt) suggested that the question of ad hoc and fixed chambers should be further considered.

Mr. Fitzmaurice (United Kingdom) suggested that the Court should not be obliged to set up chambers in advance but if the Court decided to establish standing chambers the number should be fixed by the Court. If chambers were established ad hoc, the number of judges would be fixed by the Court with the consent of the parties. The question being put in this form, there were 21 votes in favor, and none in opposition.

Articles 26, 27, 29, and 30 were approved as a whole, subject to the consideration of the Drafting Committee.

Sr. Urdaneta (Colombia) stated that if he had been present when the vote was taken on the question of changing the method of nomination he would have voted in favor of the change.

The Committee adjourned at 1:15 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 71(57)
G/58
April 19, 1945

CORRIGENDUM OF SUMMARY OF NINTH MEETING (REVISED)

Change the last sentence of the third paragraph of page 4 to read: "... Judges nominated by governments would be more likely to be influenced by those governments".

Paragraph 4 should read.

> "Dr. Wang (China) expressed the view that judges should be nominated by governments and that, as suggested by the Turkish representative, the governments should consult the national groups, the highest courts and certain other institutions with respect to the nominations."

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 58
G/46
April 16, 1945

SUMMARY OF TENTH MEETING

Interdepartmental Auditorium, Conference Room B
Monday, April 16, 1945, 3:15 p.m.

The meeting was opened by the Chairman, Mr. Hackworth (United States).

The Committee considered the reports of the two subcommittees with respect to Article 36 (Jurist 41, Jurist 43).

In connection with the report of the subcommittee on the optional clause (Jurist 41) there was considerable discussion as to the word "justiciable", which the subcommittee had incorporated in Article 36.

At the Chairman's request, Mr. Fitzmaurice (United Kingdom) explained the reason for this insertion, since it was a United Kingdom proposal. Mr. Fitzmaurice stated that it was felt that the wording of the first paragraph in the present Statute of the Court ought to be changed to make it clear that the Court's jurisdiction is confined to legal disputes, as he believed it was intended to be. He noted that there is an inconsistency between the first paragraph of Article 36 of the present Statute and the second paragraph respecting jurisdiction under the Optional Clause which refers only to legal disputes. In the view of the Government of the United Kingdom, it is highly undesirable for a court of law to be used for the settlement of political disputes, and only legal or justiciable disputes should be referred to such a court. Mr. Fitzmaurice recalled that several political disputes of an embarrassing character, notably the Austro-German Customs Union case, had been referred to the Court by the political organs of the League of Nations to get rid of them.

Dr. Wang (China) noted that the first paragraph of Article 36 of the present Statute concerns only cases which the parties voluntarily refer to the Court, that is, cases of jurisdiction by consent, and had no relation to the provisions in the second paragraph with regard to the Optional Clause.

Mr. Fitzmaurice (United Kingdom) said he appreciated Dr. Wang's point; but he emphasized again that it was completely wrong that any country should have the right to submit non-legal disputes to the Court. Such cases should be referred to the Permanent Court of Arbitration or to some ad hoc arbitral tribunal. He felt that in the long run it would depreciate the value and the prestige of the International Court of Justice if it were used for the settlement of disputes of a non-justiciable character.

Professor Bailey (Australia) asked if the question of the jurisdiction of the Court could be dissociated from the law the Court is to apply, asking if the provision for "ex aequo et bono" in the final paragraph of Article 38 would disappear. Mr. Fitzmaurice replied that there is a difference between the character of a dispute and the rules of law which the Court would apply. He noted that there might be considerations of equity which the Court might wish to use in reaching a decision and there was no reason why the Court should not apply such considerations.

Professor Spiropoulos (Greece) stated that although he had been on the subcommittee which prepared the draft on the Optional Clause (Jurist 41), he felt that he would prefer to eliminate the word "justiciable". He felt that this word was not necessary since the Court would have to apply certain stated rules of law under Article 38 of the Statute.

Professor Basdevant (France) stated that like Professor Spiropoulos, he doubted the utility of the expression "justiciable". This article, he said, aims at the cases which the parties have agreed to refer to the Court and, therefore, they must feel that the Court can decide the case under Article 38. In his opinion, that should be sufficient to make a dispute justiciable. He noted that in many cases there would be doubts with respect to the competence of the Court and as to the nature of the dispute, if the restriction "justiciable" were introduced. This would also make it difficult for the Court to decide cases "ex aequo et bono". He thought this change was not useful and preferred that Article 36 be maintained as it now is in the Statute.

The Chairman put to a vote the question whether the word "justiciable" in the draft of Article 36 (Jurist 41) should be retained. Since 7 representatives were for the change and 14 representatives were opposed, the word "justiciable" was deleted from this draft.

The Chairman also noted that in the last line of the first paragraph of Article 36 in this draft (Jurist 41), the conjunction "and" should be dropped and the word "or" should be substituted. This matter was referred to the Drafting Committee.

The Committee then considered in detail the draft on compulsory jurisdiction (Jurist 43). The Chairman noted that in this draft the last sentence of the first paragraph of Article 36 would also have to be changed, substituting "or" for "and" in the last sentence.

The Chairman referred both drafts (Jurist 41, Jurist 43) to the Drafting Committee to be incorporated in the draft Statute in brackets, requesting the Rapporteur to explain in his report why these two drafts were put in brackets and referred to the San Francisco Conference in this manner.

Mr. Fitzmaurice (United Kingdom) stated that while he himself did not favor general compulsory jurisdiction, he wanted to call the attention of those who did favor it to the effect that the present draft (Jurist 43) would have upon the relations of their states with the present enemy states. He noted that there was no provision for reservations, so that if the enemy states later became parties to the Statute, this draft would make it possible for these states to take other states to the Court on matters arising out of the present war. He added that the present draft would oblige states to take matters arising 50 years hence to the Court. He thought that those favoring compulsory jurisdiction should give careful consideration to the matter of reservations.

Sir Michael Myers (New Zealand) asked whether the present draft on compulsory jurisdiction was being sent to San Francisco as approved by this Committee. In the event that the San Francisco Conference should adopt the principle of compulsory jurisdiction for the Court, Sir Michael was not prepared to accept this present draft (Jurist 43). He supposed that if compulsory jurisdiction were approved at San Francisco, the United Nations Charter would contain a provision for it. He assumed that the intent of forwarding the present draft (Jurist 43) was to inform the San Francisco Conference as to what was in the minds of the present group. The Chairman agreed that this was the intent and that this draft (Jurist 43) was not necessarily the final draft. Sir Michael stated that if the San Francisco Conference approved the principle of compulsory jurisdiction, Article 36 would have to come back for consideration. Ambassador Cordova (Mexico) stated that this draft (Jurist 43) was on the same footing as the other draft (Jurist 41).

Professor Bailey (Australia) said he would like to see further consideration with regard to the subject of reservations, particularly with respect to disputes which parties have agreed to submit to some other method of peaceful settlement. He noted that the Australian representatives had said they supported the principle of compulsory jurisdiction, but nevertheless they had in mind a reservation as to cases where other methods of pacific settlement had been agreed upon. The Chairman observed that the Dumbarton Oaks Proposals also contemplated the use of other pacific methods of settlement and that the Court would probably be the last resort in most disputes. Pro- * fessor Bailey commented that as the draft now stands the Court would seem to have general compulsory jurisdiction and recalled that there had been considerable embarrassment in Australia where there had been two competing tribunals with compulsory jurisdiction.

Dr. Gjurgjevic (Yugoslavia) asked about a case where one party does not want to go before the Court and who would decide whether the case should be submitted to the Court.

Professor Basdevant (France) stated that if the San Francisco Conference decides upon compulsory jurisdiction for the Court, it will be necessary to decide whether to go as far as this draft (Jurist 43) or whether reservations would be required, particularly with reference to past disputes. He noted that at the beginning of the present war, Great Britain, the Dominions, and France declared that their declaration with regard to the compulsory jurisdiction of the Court would not include instances arising out of the present war. He thought this point was of capital importance and that if the San Francisco Conference adopted the principle of compulsory jurisdiction, it would have to examine this question and see whether it would apply the principle fully or make reservations with respect to instances arising out of the war, etc. The Chairman suggested that Professor Basdevant mention in his report this point with respect to reservations.

M. Star-Busmann (Netherlands) wished to make the same observation as the representative of Australia, to the effect that the text of Jurist 43 seemed to exclude other modes of settlement. He wondered if there were any purpose in submitting this text to the San Francisco Conference or if it could not be covered in the report.

Hafez Ramadan Pacha (Egypt) stated that the Egyptian representatives hold a view which would conciliate these

58 *[Corrigendum see p.216]

divergent opinions and noted that the proposal of the Egyptian representatives for the revision of Article 36 (Jurist 31) had been submitted but had not yet been distributed. M. Ramadan summarized this proposal as follows: That the jurisdiction of the Court should include all cases which the parties submitted and all matters provided for in the Charter of the United Nations and in treaties and conventions. That in principle, the compulsory jurisdiction of the Court over the classes of disputes now enumerated in Article 36 was accepted. Then, the members of the United Nations or parties to the Statute would be permitted to make reservations as to compulsory jurisdiction, such reservations to benefit any other party to a dispute against which that state may have availed itself of the jurisdiction of the Court. He noted that this proposal was similar to that put forward by the American and Canadian Bar Associations, that is, that a state should be permitted to attach reservations to the principle of compulsory jurisdiction and thereafter withdraw or waive such reservations. M. Ramadan thought that this was a solution for the divergence in the views.

The Chairman suggested that the Egyptian proposal be submitted to the San Francisco Conference, and M. Ramadan stated that this would be agreeable to him.

Dr. Gjurgjevic (Yugoslavia) stated that as Professor Basdevant had pointed out, it was a legal principle that laws should not be retroactive. If states undertook an obligation without accepting compulsory jurisdiction, and suddenly the rule was extended to cases which had arisen years before, it would, in effect, be retroactive. Therefore, he thought that the principle of compulsory jurisdiction, if adopted, should apply only to cases arising in the future.

Sr. Ballivian (Bolivia) asked whether Article 67 of the Rules of Court, relating to the appeal to the Court of cases from other courts, should not be incorporated in the Statute.

Hafez Ramadan Pacha (Egypt) reminded the Committee of Judge Hudson's discussion of the problem of appeals at a previous meeting, and suggested that this discussion be noted in the report.

Judge Hudson pointed out that Article 67 of the Court's Rules deals with procedure on appeal, not with jurisdiction. Since this Committee, like the one which framed the existing Statute, had taken the position that procedural matters should in general be omitted from the Statute, this matter probably should be omitted. Jurisdiction on appeal was covered under the first paragraph of Article 36, in both proposed drafts; jurisdiction on appeal would depend upon the agreement of the parties. The Chairman expressed agreement with Judge Hudson.

Sr. Dihigo (Cuba) remarked that nothing had been said thus far about the problem of enforcement of judgments. He thought this Committee should make some reference to this problem, if only for the purpose of calling the attention of the San Francisco Conference to it.

Dr. Wang (China) declared that he would like to see an express provision, either in the Charter of the organization or in the Statute of the Court, empowering the Security Council to take hecessary steps for enforcing the judgments of the Court if any State should not comply with them.

Mr. Fitzmaurice (United Kingdom) was of the view that a clause of this kind belonged in the Charter, if at all, rather than in the Statute of the Court. He also observed that there had been no case in which a judgment of the Permanent Court of International Justice had not been executed by the parties, and expressed doubt whether such a provision was necessary.

Hafez Ramadan Pacha (Egypt) believed that judgments of the Court would generally be carried out. But in principle a judgment without a sanction was of little value. In case there should be a refusal to comply, there ought to be a provision that the case should be sent to the political organs of the organization for such action as might seem necessary.

Professor Spiropoulos (Greece) stated that his delegation had once contemplated submitting a proposal for such a provision but had later decided against it. As the representative of the United Kingdom had pointed out, all the judgments of the old Court had been executed, and this was generally true of international tribunals. But if a great power should refuse to carry out a judgment against it, and there was a provision that the Security Council was required to enforce the judgment, the dispute might lead to war. Hence, he thought a political question was involved and that the matter should be left to the San Francisco Conference.

The Chairman remarked that public opinion would play a large part in enforcement of the Court's judgments. If it should be insufficient, and the dispute give rise to a threat to peace, the matter would fall within the jurisdiction of the Security Council. Therefore there was no great danger in omitting such a provision from the Statute. In any event, he agreed that the proper place for such a provision was the Charter, not the Statute. The Rapporteur should take note of the discussion on this point.

The Chairman then proposed that Mr. Read (Canada), who had acted as Chairman of the Drafting Committee, should take up the report of that Committee, dealing only with the articles which had been changed.

Sr. Dihigo (Cuba) inquired what was to be done about Article 1, no draft of which was included in the Drafting Committee's report. He observed that there had been a subcommittee report on this article and a lengthy discussion in the Committee on the question whether the old Court should be continued or a new one established.

Sir Michael Myers (New Zealand) expressed doubt that any satisfactory solution to this perplexing problem could be reached in this Committee. His suggestion was that a special committee be set up at this time to study the problem of continuity and report to the San Francisco Conference. He proposed a committee of about nine, and thought it should include Belgium, China, France, and the Soviet Union.

The Chairman suggested that the matter be deferred until the Drafting Committee had been heard from.

Mr. Read (Canada) called on Mr. Jessup (United States) to explain the markings in the Drafting Committee's report (English text, Jurist 49; French text, Jurist 50). Mr. Jessup explained that the report was based on the American draft and that changes by the Drafting Committee were changes in that draft. Deletions made by the Drafting Committee were indicated by slanting lines, additions by double underlining.

Mr. Read stated that the Drafting Committee had met all day Saturday, appointed Mr. Jessup to prepare a draft and met on Sunday to revise the draft. In general, it had made no changes except upon instructions from the Committee. It had, however, made some changes to conform the English text to the French, and some verbal changes where the English text was very bad. Mr. Read then went through the draft, explaining the changes which had been made. Each of the paragraphs had been numbered, for more convenient reference. Changes to make the English text conform to the French had been made in Articles 16(2), 17(3), 31, 43(2), 47, 55(1) and 66(4). The Committee had found it impracticable to draft Article 1 until the basic question of principle, namely, that of continuity, had been decided at San Francisco; the Committee had, therefore, thought it desirable to leave Article 1 entirely blank. In Article 14, the phrase "at its next session" was stricken because the Security Council is to be in continuous session. In Article 15, the text of the existing Statute was restored according to instructions from the Committee. The Committee had asked the Drafting Committee to reconsider the problem of judges' vacations. Accordingly, Article 23(2) had been drafted as a practical solution, with the benefit of the experience of Dr. Wang (China), Judge De Visscher (Belgium), and Judge Hudson, who had all served on the Court. Article 31, relating to national judges, had been discussed more than any other, but after efforts to frame a new text, the Committee had decided it was best to leave the old text practically as it was, despite some inadequacies. In Article 34(2), relating to information received from international organizations, changes had been made in light of the lengthy discussion in the Committee. In Article 43(2) the word "cases" was changed to "memorials" to conform to the practice of the Court. The reference to "deputy" in 52(2) was thought somewhat misleading and accordingly changed. Article 57 was amended to conform to the Court's practice of rendering concurring as well as dissenting opinions. "Sentence" in Article 51(5) was changed to "judgment" on agreement of the full Committee, since the Court exercises no criminal jurisdiction. The phrase "as a third party" was eliminated from Article 62(1) as misleading. Article 69, on amendment, was drafted to conform to the amendment clause of the Charter in the Dumbarton Oaks Proposals, and on the assumption that if the Dumbarton Oaks clause should be changed at San Francisco, Article 69 would be changed accordingly.

The Chairman asked if there were any objections to the report of the Drafting Committee. Since there were not, the Chairman declared the report accepted and requested the Drafting Committee to coordinate it with those articles of the Statute which had been referred to it in the morning's meeting. The Chairman stated that the next time the Statute came before the full Committee, it should be in completed form so that the full Committee could reexamine it.

It was agreed, moreover, that the Drafting Committee should be authorized to make such minor verbal changes in the draft as it may deem necessary in its work without the prior authorization of the full Committee; but that such minor verbal changes were to be called to the attention of the full Committee when the revised draft was presented to it.

In response to a question by Hafez Ramadan Pacha (Egypt), the Chairman stated that the various points noted in the draft (Jurist 49) for future reconsideration would be reconsidered in this committee.

Professor Bilsel (Turkey) suggested that in order to conciliate the two divergent points of view with respect to the nomination of judges, the Committee might adopt the principle that the members of the Court of International Justice be elected by the Security Council and by the General Assembly from a list of delegates nominated by the governments and by the national groups. If a government and its national group were in agreement, there would be no difficulty. If there were disagreement then the government would not transmit the proposal of the national group. He stated this was merely a proposal.

Professor Bilsel then suggested that the Chairman write to the various organizations who had supplied materials and proposals, letters expressing the appreciation of the Committee of Jurists for their great help and inspiration. He named the following groups: The Carnegie Endowment for International Peace; American Bar Association Journal; Committee of the American Bar Association to Report as to Proposals for the Organization of Nations for Peace and Law; Committee of the Canadian Bar Association on Legal Problems of International Organization for the Maintenance of Peace; and the National Lawyers Guild.

The motion of the representative of Egypt that the Chairman write letters of appreciation to these organizations was carried.

The Chairman then raised the question of the languate to be used in submitting the recommendations of this Committee to the San Francisco Conference, observing that it had been suggested that these recommendations be presented in English, French, Russian, and Spanish. Dr. Wang (China) observed that since the Charter was also to be in Chinese, there should be a Chinese text of this material and offered to supply the Chinese text. There was considerable discussion as to whether the report should be in these different languages and also as to whether the text of the Statute should be in languages other than English and French.

Mr. Fitzmaurice (United Kingdom) asked whether the Russian, Chinese, and Spanish texts of the Statute were to be regarded as translations or authentic versions, noting the difference between putting the reports in several languages for the convenience of the delegates and providing for authentic versions of the Statute in several other languages.

* Minister Novikov (Soviet Union) thought if the Final Act and the report were all signed in five languages they would all be authentic versions.

Minister Novikov stated that he did not object to the minutes being in English alone but if they were also in French, then Russian should also be used. The Chairman stated that it was not intended that the minutes should be translated into French. M. Jorstad (Norway) moved that the minutes should be in English and French, and this motion was seconded by M. Star-Busmann (Netherlands).

Sr. Dihigo (Cuba) also suggested that since English and French were the official languages of the Court, the English and French text should be the authentic text which could be translated into as many languages as convenient. Mr. Fitzmaurice (United Kingdom) supported this proposal.

It was agreed to hold over the question of languages until Wednesday morning.

Minister Novikov (Soviet Union) remarked that the chief argument of the United Kingdom representative was that the translations would involve a great deal of work. He observed that the representative of China had just stated that a Chinese translation was in preparation. A Russian text was also being prepared simultaneously with the English one, he declared, and therefore the work of the Committee need not be impeded. He saw no reason why English and French should be preferred.

Mr. Fitzmaurice (United Kingdom) explained that he had not said that he preferred to have the texts in English and French; he did not wish to prejudice the question at all, and thought the decision should be made

*[Corrigendum see p.216]

at San Francisco. He believed, however, that the Committee was not now in a position to do anything but continue the existing texts of the Court's Statute, which were in French and English only.

The Chairmah inquired whether there was any objection to putting the work of this Committee into the five languages.

Mr. Fitzmaurice (United Kingdom) replied that he had no objection to putting the report in as many languages as seemed desirable, provided it was made clear that the translations were unofficial. But he thought the text of the Statute should be in French and English only. He pointed out that the Statute itself provides that French and English shall be the official languages of the Court.

Professor Spiropoulos (Greece) observed that the languages of democracy have not always been the same, that before the last war French had been the international language used among European countries, but that after the war new conditions had been recognized and both English and French adopted. New conditions might require a corresponding change now. But the decision was one which should be made only by the San Francisco Conference. He thought this Committee should follow the existing international practice and use English and French; he did not believe this would in any way prejudice the question when it came up in San Francisco.

Hafez Ramadan Pacha (Egypt) was also of the view that English and French should be used, as they had been throughout the Committee's meeting.

Dr. Gjurgjevic (Yugoslavia) proposed that the official text be in English only, but that anyone who wished to submit a translation in another language to be appended to the official text be permitted to do so. Dr. Moneim-Riad Bey (Egypt) pointed out that the Rapporteur would naturally prepare the report in French.

Professor Basdevant (France) observed that since the Committee's discussions had been based on existing French and English texts of the Statute, he thought the logical consequence was that the report of the Committee should be in the same two languages. He said that of course he would write the report in French, hoping to finish it the following day, and that he would want to review the English translation which the Secretariat would have to make for him. He had no objectio to having the report translated into other languages, provided it was understood that they had not been fully discussed and were made only for the purpose of aiding the work at San Francisco.

The Chairman suggested that decision on this matter be reserved until Wednesday, when the Committee would next meet, and that further consideration be given it in the meantime. He called attention to the difficulty of putting the proceedings of the Committee into the various languages, but stated that he desired to be as accommodating as possible.

Dr. Moneim-Riad Bey (Egypt) urged that the representatives desiring texts in more than the two languages defer to expediency without waiving their rights so far as San Francisco was concerned, particularly since the matter had come up so near the close of the Committee's work.

Minister Novikov (Soviet Union) desired to make it clear that he had raised the point with the Chairman on Friday of last week. He agreed that the question should be left over until Wednesday, but wished to stress that there were no really technical difficulties, because the respective delegations would cooperate in making the translations. He thought the decision had nothing to do with what might be done at San Francisco, because it related only to texts of this Committee's work. A decision excluding the Russian language from among the official languages of this Conference would not be acceptable to his Government, he declared.

The Chairman referred to the suggestion of the representative of New Zealand that a committee of nine be appointed to study Article 1 of the Statute and to make a report thereon. Sir Michael Myers (New Zealand) stated that he was willing to wait upon the report of the Drafting Committee before taking up this proposal.

The Chairman noted that the closing hour had already passed and declared the meeting adjourned.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 72 (58)
G/59
April 19, 1945

CORRIGENDUM OF SUMMARY OF TENTH MEETING (REVISED)

The third full paragraph on page 10 should be changed to read as follows:

> "M. Jorstad (Norway) moved that the minutes should be in English and French, and this motion was seconded by M. Star-Busmann (Netherlands). Minister Novikov stated that he did not object to the minutes being in English alone but if they were also in French, then Russian should also be used. The Chairman stated that it was not intended that the minutes should be translated into French."

Change the last sentence of the first paragraph of page *10 to read: "... Professor Bailey commented that as the draft now stands the Court would seem to have general compulsory jurisdiction and recalled that there had been considerable embarrassment in Australia where there had been two competing tribunals each vested with jurisdiction."

In the third full paragraph of page 10, the last sentence should be replaced by the following: "... M. Jorstad (Norway) moved that the minutes should be in English and French. The Committee would thus follow the precedents established by the Jurist Committees of 1920 and 1929. This motion was seconded by M. Star-Busmann (Netherlands)."

*[i.e. p.4]

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 64
G/51
April 18, 1945

SUMMARY OF ELEVENTH MEETING

Interdepartmental Auditorium, Conference Room B

Wednesday, April 18, 1945, 10 a.m.

The meeting was opened by the Chairman, Mr. Hackworth (United States), who asked Mr. Read (Canada), the chairman of the drafting committee, to present his report on the Statute and to indicate the changes that the drafting committee had made since the Statute was last considered in the full Committee.

Mr. Read (Canada) stated that the drafting committee had considered all the articles not dealt with in its previous report and also one or two other articles. He expressed appreciation to Messrs. Fahy and Jessup and to the Secretariat for their assistance in preparing the texts of the draft Statute. He asked the members of the full Committee to look at the following documents to compare them with the present English text (Jurist 59) and the French text (Jurist 60): U.S. Jurist 1 (Jurist 5); Jurist 49 (the previous English text); Jurist 48 (the previous French text). Mr. Read then went through the draft Statute article by article.

Article 1. Mr. Read called attention to the fact that the note under Article 1 had been changed to read: "For reasons stated in the accompanying report, the text of Article 1 has been left in blank pending decision by the United Nations Conference at San Francisco."

Article 2. In accordance with the suggestion of Mr. Fitzmaurice (United Kingdom), it was agreed to substitute "the Court" for "the Permanent Court of International Justice". It was noted that this is the only place where the Permanent Court of International Justice is specifically mentioned; and it was thought that since this depends upon Article 1, the reference to the Permanent Court should be stricken.

Article 3. Mr. Read stated that Article 3 was new but unchanged. He added that when he said unchanged he meant that it was the same as the American draft proposal (US. Jurist 1).

Article 4. Mr. Read stated that Article 4 is new but unchanged.

Article 5. In paragraph 1 of Article 5, the words "belonging to the States which are parties to the present Statute" have been inserted after "Permanent Court of Arbitration". In paragraph 2 of Article 5 the word "may" is inserted in the third line.

Article 6. Mr. Read stated that Article 6 is new but that there is no real change. He noted that the capital letters had been eliminated.

Article 7. Mr. Read noted that Article 7 is new but that the words "for appointment" had been eliminated at the end of the first paragraph, so as to conform to the French text.

Article 8. Mr. Read stated that Article 8 is new but that there is no change.

Article 9. Mr. Read stated that Article 9 is new and is revised and read the full text of Article 9 as it appeared in the draft (Jurist 59). He commented that there is no change in the sense; but that the revision conforms more closely to the French text.

Articles 10 and 11. Mr. Read stated that these articles are new and unchanged.

Article 12. Mr. Read stated that the first paragraph of Article 12 is new and unchanged. The second paragraph of Article 12 contains the words "the joint conference", in order to fit in with the text of the preceding paragraph. He stated that the word "elected" had been substituted for "appointed" in the third paragraph of Article 12, which conforms more closely to the French text.

Article 13. Mr. Read read the full text of Article 13 as revised (Jurist 59), relating to the terms of the judges. M. De Visscher (Belgium) declared that while he did not wish to reopen this question, Article 13 caused him some disquiet. He agreed to the idea that it was necessary to provide continuity for the Court; but he questioned whether the triennial system, with five new judges in the Court every three years, was the best method. He felt that this might cause great instability in the composition of the Court and compromise the jurisprudence of the Court. He thought that a homogeneous jurisdiction could be acquired only by men working together a long time, and that the main purpose of a court of international justice was to furnish a unity of jurisprudence, which would require some fixed personnel With respect to the method proposed, M. De Visscher thought that there would be great inconvenience in having an election every three years and that, moreover, it would not be good for the authority of the Court. The independence of the Court must be protected; and electoral competition should be avoided.

The Chairman thanked M. De Visscher for his observations and noted that this article had been debated at considerable length during M. De Visscher's absence. M. De Visscher said that he did not want to reopen the question but that he did want to make these observations.

Professor Basdevant (France) called the Committee's attention to certain differences between the English and French texts of Article 13 and read the French text the way he thought it should be. It was agreed that Professor Basdevant's revision would be incorporated in the Statute.

Article 20. Mr. Read (Canada) stated that there was no change in this article.

Article 22. Mr. Read read the English text of Article 22 (Jurist 59), which he said had been changed in accordance with the direction of the full Committee. Professor Basdevant (France) called attention to a discrepancy in the French text. Señor Dihigo (Cuba) called attention to the fact that in the first paragraph of Article 2 the full Committee had only agreed to drop the word "valid" but that in this draft the phrase "and rendering decisions" had also been eliminated. Professor Basdevant (France) stated that his report refers to Article 22 and observes that as it had been decided that the seat of the Court is to remain at The Hague, it was thought desirable to authorize the Court to sit elsewhere and to exercise its functions elsewhere. After some discussion on this point, it was agreed to add the phrase "and from exercising its functions" after "sitting" in paragraph 1 of Article 22.

Ambassador Cordova (Mexico) asked if the Committee were just reading the Statute or if it were actually approving it as it went along. In the latter case, he said, he wanted to go back to Articles 4 to 12, inclusive, and propose that an alternative draft for these articles, the United Kingdom's proposal, appear in the text in a parallel column. He noted that the Committee had seemed to be more evenly divided on this question than on the question of compulsory jurisdiction.

The Chairman stated that it was his understanding that the articles of this draft Statute were being approved as read, if no objection were made.

Professor Basdevant (France) recommended a change in the French text of Article 22 to correspond more exactly with the English.

The Chairman then took up the question raised by the representative of Mexico as to whether Articles 4 to 12 in the form in which they appeared in Jurist 44 should be inserted as alternatives to the provisions in Jurist 59.

Justice Farris (Canada) suggested that instead the Rapporteur should be instructed to deal fully with the division of opinion on this point in his report. Professor Basdevant (France) said that in his report he was discussing the controversy over the nomination of judges but he was ready to elaborate the discussion more fully if the Committee so desired.

Mr. Fitzmaurice (United Kingdom) supported the suggestion of the representative of Mexico. In view of the division of opinion on this point, he pointed out that if it was decided at the San Francisco Conference to adopt the system of direct nomination by governments, considerable modification of the Statute would be required; in fact eight articles would need to be redrafted. This would involve a considerable burden on the San Francisco Conference, and he thought the Committee should present alternative texts. He suggested, however, that Articles 4 to 12, as they appeared in Jurist 44, would have to be referred to the drafting committee to be harmonized with other provisions in the Statute.

Dr. Moneim-Riad Bey (Egypt) pointed out that there had been a vote in favor of maintaining the present system. He thought that the presentation of alternatives in Article 36 was not a precedent in this case since the proposals in Article 36 were true alternatives while these were not. He suggested that the text of Articles 4 to 14, as they appeared in Jurist 44, might be referred to in the report, but he did not believe that they should be included in the draft of the Statute.

The Chairman declared that it was important for the Committee to do its work well and for that reason he did not believe that it should be bound by strict rules or procedure. He suggested that, unless there was opposition, the drafting committee might be requested to put in the alternatives. Since there was no opposition, it was agreed that the drafting committee should meet at 3 p.m. for this purpose.

Article 26. The chairman of the drafting committee next read the new text of Article 26, explaining that it was based upon the reports of two subcommittees and took into account subsequent discussion in the full Committee. The draft provided that when the Court set up chambers to decide particular cases the approval of the parties should be obtained. This was in harmony with the advice of three judges of the Court.

Dr. Moneim-Riad Bey (Egypt) raised the question as to whether the chambers were to have a stated quorum and if so what it should be. The chairman of the drafting committee explained that there were two types of chambers and that the number of judges to compose the chambers dealing with special categories of cases was to be determined by the Court. Judge Delgado (Philippine Commonwealth) moved that in the first paragraph dealing with chambers to handle special categories of cases there be included after the word "determine" the words "but in no case shall it be less than three". This was seconded by Dr. Moneim-Riad Bey (Egypt).

Judge Hudson inquired whether it would not meet the purposes of the Committee to say that the chambers should be composed of three or more judges as the Court might determine. This wording was accepted by the representatives who had made and seconded the motion. Professor Bailey (Australia) suggested that changes might not be necessary because a chamber would not have jurisdiction unless the parties agreed. Judge Delgado (Philippine Commonwealth) objected that, if a number were not fixed, the decision would lie with the political branches of governments. Mr. Moneim-Riad Bey (Egypt) pointed out that the chambers which were to handle special categories of cases did not do so at the request of the parties.

There was no objection to the revision proposed by the representatives of the Philippine Commonwealth and Egypt as revised by Judge Hudson.

Dr. Gómez-Ruiz (Venezuela) suggested striking out the last part of the first paragraph of Article 26 "for example, labor cases and cases relating to transit and communications". The Chairman explained that these words had been designed to show that the Committee had in mind the interests of the labor and transit and communication organizations.

Judge Delgado (Philippine Commonwealth) suggested that the number of judges to compose a chamber should be specified in paragraph 2 as well as in paragraph 1 but that the phrasing of the proposal should be left to the drafting committee. The Chairman explained that in paragraph 2 it had been desired to leave the matter to the discretion of the parties. He said that for himself he could see no harm in this. Judge Delgado said that the change which he had proposed in paragraph 1 was to assure that the chamber should always be a collegiate tribunal. He thought paragraph 2 should be consistent with paragraph 1, and he did not wish to have the composition of the chambers determined by political agencies.

At the request of the representative of Egypt, Judge Hudson declared that the number of judges in chambers should be considered in connection with Articles 27 and 31 (4). He stated that Judge Huber had wished to insure that ad hoc judges might be added to the chambers. For this reason the number composing the chambers had been increased from three to five in the revision of 1929. This idea had been maintained in this draft in Article 31 (4). If the number of judges in the chambers were limited to three, the President of the Court would have to ask two members of a chamber to withdraw in favor of ad hoc judges. Judge Hudson further stated that he favored changing Article 26 (2) to conform with paragraph 1.

The Chairman declared that it was the general desire to provide means of settling disputes peacefully. If the parties were willing to take a case to a chamber, he thought it would be perfectly satisfactory to have the judgment of that chamber be the judgment of the Court, as provided in Article 27. It was, however, a matter for the Committee to determine.

Dr. Moneim-Riad Bey (Egypt) proposed that the minimum number stated in paragraph 1 should be raised from three to five. He believed, however, that paragraph 2 should be treated differently and saw no reason why those chambers should be collegiate bodies if the parties were willing to have their cases decided by a chamber composed of one judge.

Judge Delgado (Philippine Commonwealth) agreed to Judge Hudson's views and favored five as a minimum number in paragraph 1. He stated, however, that he was not willing to make a distinction between paragraphs 1 and 2.

Dr. Gjurgjevic (Yugoslavia) suggested that the difficulty might be solved by providing that three or more judges of the Court should compose a chamber; then ad hoc judges would be additional.

The chairman of the drafting committee pointed out that this would affect the structure and drafting of other parts of the Statute since Article 31 (4) provided that ad hoc judges and chambers should take the place of regular judges.

The Chairman put the question whether the Committee favored changing Article 26 (1) to fix the minimum number of judges in chambers at five or more. There were 10 votes in favor and 13 in opposition. The proposal was therefore lost and Article 26 stood as previously adopted.

Article 27. The chairman of the drafting committee read Article 27 and explained that no change had been made. Professor Basdevant (France) called attention to a change in the French text from "arrêts" to "jugements". He suggested that this might limit the role of chambers and would, for example, make it impossible for chambers to deliver advisory opinions. Judge Hudson explained that as a chamber could function only with the consent of the parties a chamber could not deliver an advisory opinion. It was agreed, however, to substitute "arrêts" for "jugements" in the French text.

Article 28. When Article 28 was read, Señor Dihigo (Cuba) pointed out that it provided that the chambers might sit elsewhere than at The Hague only with the consent of the parties, while Article 22 permitted the Court to sit elsewhere on its own initiative.

Dr. Moneim-Riad Bey (Egypt) proposed that the article should be eliminated entirely.

The Chairman explained that Articles 22 and 28 were different in purpose. Article 22 was intended to permit the Court to hold sittings elsewhere, for example, in case it was prevented from sitting at The Hague, while Article 28 was intended to permit chambers to sit where it was desirable for the conduct of particular cases.

M. Star-Busmann (Netherlands) suggested that Articles 22 and 28 should be made to conform, pointing out that Article 22 provided that the Court might sit and exercise its functions elsewhere than at The Hague. The Chairman thought that there would be no opposition to providing that the chambers might sit and exercise their functions elsewhere than at The Hague. The chairman of the drafting committee accepted this suggestion and stated that "to a dispute" should be deleted as it had been elsewhere in the Statute. Dr. Moneim-Riad Bey (Egypt) pointed out that exercise of functions would cover advisory opinions, but though the chambers did not give advisory opinions he thought the phraseology was satisfactory. Judge Hudson agreed that chambers might give orders and that therefore the term "judgment" might not be adequate.

Article 29. The chairman of the drafting committee read Article 29 explaining that the only changes proposed were grammatical.

Dr. Moneim-Riad Bey (Egypt) inquired whether the chamber of summary procedure should not be reduced to three members. The chairman of the drafting committee explained that the drafting committee had been carrying out the instructions of the subcommittees and the full Committee. Furthermore, Article 29 dealt with a standing chamber and gave the Court no discretion as to the number of judges. He did not think the Committee would regard it as desirable to reduce a standing chamber to three members.

Article 30. Mr. Read (Canada) read Article 30 as it appeared in the English text (Jurist 59). He stated that this revision conformed to the actual practice of the Court, in that it authorizes the Court to make rules for carrying out its functions. It was also thought that the phrase "rules of procedure" would include rules of summary procedure. Professor Basdevant (France) noted a change that should be made in the French text of paragraph 2 of Article 30.

Article 31. Mr. Fitzmaurice (United Kingdom) raised the question whether paragraph 4 of Article 31 was not already covered by paragraph 2 of Article 26. It was decided to leave paragraph 4 of Article 31 as it stood, and Judge Hudson noted that under paragraph 2 of Article 26 the Court could not appoint ad hoc judges. Professor Basdevant (France) noted a mistake in the French text of paragraph 4 of Article 31.

Article 34, Article 35. Mr. Read stated that there was no change in these articles.

Article 36. Mr. Read (Canada) stated that in accordance with the instructions of the full Committee, the drafting committee had set up the article in alternative drafts in parallel columns, with the optional clause draft on the left-hand side and the compulsory jurisdiction draft on the right-hand side. He stated that in accordance with the Committee's instructions the drafting committee had stricken "justiciable" from the first paragraph of the optional clause draft and had substituted "or" for "and" in the first paragraph of each draft. Mr. Read stated that in accordance with the proposal of Dr. Wang (China), the chairman of the subcommittee which prepared the compulsory jurisdiction text, the phrase "in any legal dispute" had been substituted for "in all or any of the classes of legal disputes", in the second paragraph of the compulsory jurisdiction draft.

The Chairman noted that "or" had been put in the wrong place in the first paragraph of each draft. It was agreed that the drafting committee should change the first paragraph of each draft to read: "or in treaties and conventions in force".

Señor Urdaneta (Colombia) proposed that the word "justiciable" be reinserted in the first paragraph of the optional clause draft. He felt that it was very important to do so because the real nature of the Court might be changed and many countries might be obliged to make reservations and observations otherwise.

The Chairman thought with respect to the observation of the representative of Colombia that there had been considerable discussion with respect to the word "justiciable". He thought it would be difficult to give an accurate interpretation of this term and wondered if the point were not covered by paragraph 2 of the draft which refers to "legal disputes". Mr. Fitzmaurice (United Kingdom) stated that this did not cure the defect since the two paragraphs covered two different things. He recalled that the point had been made in a previous meeting that the first paragraph covered voluntary reference of cases to the Court, and that the second paragraph covered cases in which the parties had accepted the compulsory jurisdiction of the Court. Mr. Fitzmaurice felt that this is a very serious point and that something ought to be inserted in the report with respect to it. He noted that two points had been made in opposition to including the word "justiciable" in the draft: First, with respect to the difficulty of interpreting the word, he observed, this is true, but it does not affect the principle that cases of a political character should not be referable to the Court even if the parties want it; second, the point has been made that since paragraph 1 provides for voluntary reference to the Court, the parties should be able to refer political cases to it. From the lawyer's point of view, he said, it is altogether wrong that parties should refer political cases to a court. He thought it was all right for the Court to deal with a case on a partially equitable basis so long as the substance of the case is legal. Mr. Fitzmaurice hoped that under the new United Nations organization there would be better provision for the settlement of political disputes. He noted that the machinery of the Security Council and the General Assembly had been set up for that purpose and thought it would be undesirable for parties to by-pass the political organs and go to the Court. Mr. Fitzmaurice therefore supported the motion that the word "justiciable" be reinserted in the draft. Otherwise he felt that there should be special reference to the matter in the Committee's report.

The Chairman agreed with the views of the representatives of Colombia and the United Kingdom that the Court should deal with legal and not with political cases. He proposed, therefore, that after the word "cases" the phrase "of a legal character" be inserted, so as to avoid the word "justiciable".

Dr. Moneim-Riad Bey (Egypt) thought it would be better to leave to the United Nations Charter the question whether political cases or legal cases should be submitted to the Court. Mr. Fitzmaurice thought that did not cover the point, because the United Nations Charter was already referred to in the first paragraph of Article 36.

Ambassador Cordova (Mexico) asked what the situation would be if two parties wanted to come before the Court and believed that the Court could give a decision on the juridicial side of a question. He asked who would decide whether a question was legal or political, where the parties had agreed to submit a case to the Court. Mr. Fitzmaurice (United Kingdom) replied that the Court could deal with legal aspects of a case, and that if the Statute provided that the Court should have jurisdiction over a case of a legal character, it could be left to the Court to decide whether a question was one of a legal character. Ambassador Cordova stated that he was referring chiefly to the compulsory jurisdiction clause and thought that if the word "legal" were inserted there, the parties would have a controversy as to the nature of the issue. Mr. Fitzmaurice noted that that often happened, and that moreover paragraph 3 of the compulsory jurisdiction draft gave the Court jurisdiction to decide whether a case was justiciable.

Judge Delgado (Philippine Commonwealth) moved to adopt the Chairman's suggestion so that paragraph 1 of Article 36 would be amended to read "all cases of a legal character".

Dr. De Bayle (Costa Rica) asked whether this change was to be made in the optional clause draft or the compulsory jurisdiction draft. The Chairman said that he supposed the same change would be made in both texts. Judge Delgado (Philippine Commonwealth) moved that the same change be made in both drafts.

Professor Basdevant (France) recalled that this proposal had already been discussed quite fully. He noted that in the two texts there was also provision for two hypotheses:

(1) Cases which States voluntarily agree to submit to the Court; (2) cases of compulsory jurisdiction. In the second category, the proposal that cases be specified as "legal" is important. In the first category, of voluntary jurisdiction, if this condition is inserted, the jurisdiction of the Court will be contested. Professor Basdevant recalled the Brazilian loan case between Brazil and France in which the Court had to decide whether a loan contract should be fulfilled in gold francs, a legal question. The Court also determined what adjustment should be made, a question of a more political character. Since the parties had agreed to submit this case to the Court, there seemed to be no reason to limit the Court's jurisdiction. He recalled a more recent case involving frontiers. He thought if the Court were asked to settle this question, it should be permitted to do so. He felt that when parties agreed to go before the Court, the Court's jurisdiction should not be limited with respect to the nature of the dispute. He did not believe that the present texts should be altered. He stated, however, that Mr. Fitzmaurice's opinion would appear in his report.

Mr. Fitzmaurice (United Kingdom) stated in reply to Professor Basdevant that the latter's point was covered by the last paragraph of Article 38. He thought that it was proper to refer boundary matters to the Court, and that the Court should be free to determine a question on legal and equitable grounds as provided by Article 38. The fundamental issue, however, is whether political disputes should be referred to the Court, and Mr. Fitzmaurice thought it should be made clear that political disputes should not be referred to the Court. He noted that since, under paragraph 2 of the compulsory jurisdiction draft, legal disputes must go to the Court, the only reasonable meaning of the first paragraph of that draft is that political matters may also go to the Court.

Dr. Moneim-Riad Bey (Egypt) asked for Judge Hudson's opinion on this matter with respect to the present practice of the Court, noting that the present text of the Statute does not include the word "justiciable". He observed that the compulsory jurisdiction of the Court is restricted to legal cases and thought that parties must be given the right to take other cases to the Court. He also observed that the Dumbarton Oaks Proposals provided that justiciable disputes should normally be referred to the Court, and thought that the Dumbarton Oaks Proposals meant to provide obligatory jurisdiction for legal disputes. He further stated that he agreed with Professor Basdevant.

Señor Urdaneta (Colombia) suggested that the phrase "of a legal character" might be inserted in one text and omitted in the other.

M. De Visscher (Belgium) declared that he supported Professor Basdevant's view. He thought that debate on this point could continue indefinitely, and he favored maintaining the present text. He believed that if the words of "legal character" were inserted the jurisdiction of the Court might be dangerously limited.

Dr. Wang (China) said that he thought there were two reasons for maintaining the present language: One was that he could see no reason why a dispute which the parties were willing to submit to the Court should not be decided by it; the other was that the Court had exercised jurisdiction under Article 36 of the present Statute without any difficulty. He pointed out that all international disputes had at least some political implications and the insertion of the phrase "of a legal character" might seem restrictive. M. Jorsted (Norway) pointed out that the Permanent Court had not had enough cases and, therefore, he did not believe the jurisdiction of the Court should further be restricted. He also felt that, if States were paying for the maintenance of the Court, they should not be refused access to it when they were willing to present a case. The Chairman pointed out that there had been a motion to insert in paragraph 1 of Article 36 the wording "of a legal character". If there were no second to the motion, the matter would be left to the report.

Mr. Fitzmaurice (United Kingdom) seconded the motion and stated that, if there was difficulty in defining disputes of a legal character, the definition of legal disputes in the second paragraph of the article could be employed. There was, however, an important question of principle involved here. Would the Committee wish to see purely political questions referred to the Court? He felt that a court of arbitration could more properly decide political disputes. The international court of justice would be bound by rules which were wholly unsuitable for deciding questions which were not of a legal character.

Dr. Wang (China) pointed out that the Court would apply international law and quoted the substance of Article 38.

Mr. Fitzmaurice (United Kingdom) said that the problem was how the Court could apply legal principles in non-legal disputes.

Justice Farris (Canada) inquired whether it would meet the difficulty involved in handling disputes which were not entirely of a legal character by employing this formula: "cases in which there was a legal aspect or aspects". He did not, however, make an amendment to the motion.

The Chairman proposed the question whether Article 36 should be changed. Nine voted in favor of the change, and 21 in opposition. The motion was therefore lost.

M. Jorstad (Norway) moved that the Egyptian proposal contained in Jurist 31 should be added as a third alternative in Article 36. Dr. Moneim-Riad Bey (Egypt) read the Egyptian proposal which had been put forward in an attempt to conciliate the different points of view with regard to this article. The essence of the proposal was that States would be bound by the "optional clause" unless they made reservations regarding it. He seconded the proposal of the representative of Norway.

When the motion was put to a vote, 4 were in favor and 10 in opposition. The motion therefore was lost.

Dr. Moneim-Riad Bey (Egypt) stated that he would like to have the motion mentioned in the report. Professor Basdevant (France) stated that since the motion had been lost he could not mention it in his report.

The chairman of the drafting committee pointed out that the only remaining articles which had not been approved by the full Committee were Articles 45, 46, 48 to 52, 58, 59, 60, 64, 66, and 67. No changes, except a very few in wording, had been introduced into these articles.

The Chairman announced that the drafting committee would meet at 3 p.m. and that the full Committee would hold a session beginning at 8 p.m. to discuss the report.

The Committee adjourned at 1:15 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 81
G/68
April 18, 1945

SUMMARY OF THE TWELFTH MEETING

Interdepartmental Auditorium, Conference Room B
Wednesday, April 18, 1945, 8:30 p.m.

Mr. Fitzmaurice (United Kingdom), in the Chair, stated that Mr. Hackworth was indisposed and that the Chinese and Soviet representatives had declined to preside. The chief business of the evening was to consider the report of Professor Basdevant (France). First, however, there was a report from the drafting committee which had met in the afternoon to consider certain articles.

Mr. Read (Canada) reported for the drafting committee that it had had Articles 3 to 13 under consideration, pursuant to the directions of the Committee. In fitting in the alternative draft of Articles 4 to 13, the drafting committee had thought it necessary to amend somewhat the text of Article 3. It was now to read, "The Court shall consist of fifteen members, no two of whom may be nationals of the same State or Member of The United Nations." For the alternative draft of Articles 4 to 13, Jurist 44 had formed the basis and no substantial changes in its text had been made. Articles 7 to 9, 10(1), 11, 12, and 13 were common to both texts and hence stood unchanged. Article 10(2) was unnecessary in the new alternative. In Article 12(2) the cross reference to Articles 4 and 5 had been changed to refer to Article 7 instead, to make it fit both alternatives.

Mr. Read also stated that the committee had found no drafting changes required in Articles 22, 26, 27 and 36, which had been referred to it by the Committee. The drafting committee had, however, gone through the entire text once more, making changes in spelling and the like. Mr. Read moved acceptance of the drafting committee report, subject to any changes the Committee might desire when it saw a written text of the report. The motion was carried.

Mr. Fitzmaurice (United Kingdom) expressed the Committee's thanks to Mr. Read and the drafting committee for their diligent labors. He then outlined a procedure for considering Professor Basdevant's report. Professor Basdevant would read the French text through once. Then he would go back and take it page by page, giving the Committee an opportunity for comment. There had been circulated copies of the English translation of the Report, which was not, however, up-to-date, as Professor Basdevant had been making revisions during the day. He would call attention to those changes which had not been incorporated in the English text. There would be a short adjournment, Mr. Fitzmaurice stated, to await arrival of copies of the French text.

Mr. Novikov (Soviet Union) suggested that time might be saved by not reading either text aloud, but allowing the representatives to look over both during the remainder of the evening and then considering them the following day. Mr. Fitzmaurice (United Kingdom) thought it important to await the arrival of the French text and attempt to complete as much business as possible at this meeting. No contrary views having been expressed, the meeting was therefore adjourned for 10 minutes.

When copies of the French text arrived, Mr. Fitzmaurice suggested that in view of the lateness of the hour it might be well to have Professor Basdevant merely read the Report through once and then take up detailed consideration of it the following day. Mr. Jessup observed that this would narrow considerably the time available for preparing translations in other languages, and Mr. Preuss stated on behalf of the secretariat that translators were on hand and were prepared to work all night. Mr. Fitzmaurice, accordingly, declared that the Committee must make a strenuous effort to complete the entire consideration at this meeting. Mr. Jessup proposed dispensing with the first reading and immediately taking up the Report section by section. It was agreed to do so.

(Professor Basdevant commenced the reading of the Report. At the conclusion of each article and the discussion thereof, the Chairman called for comments or objections and, if there were none, declared the section approved. Except as otherwise noted in the following, the sections were consecutively approved without comment.)

The question was raised at the beginning as to the use of the word "commission" in the French text. It was generally agreed that this was an adequate rendering in French of the word "committee".

Sir Michael Myers (New Zealand) wished to interpose some observations respecting Article 1. Although he did not wish to reopen questions which had already been settled, he felt strongly that the Committee ought to do more with Article 1 than it had done. All it was telling the San Francisco Conference was that there were serious difficulties in deciding whether to continue the old Court or establish a new one. He thought the Committee should give the San Francisco people some assistance. It should explain the alternatives and relate the difficulties attending each. He therefore renewed his suggestion made at a previous meeting that a special committee should be appointed to report on this matter.

Mr. Fitzmaurice declared that the Committee was confronted by a time problem. There were less than two days left and it would take too long to have a subcommittee meet and bring in a report. Article 1 had been left blank in the Committee's draft and the questions regarding it had been adverted to in the Report. There would be at San Francisco a standing committee dealing with the Court, and its composition would probably not very greatly from that of this Committee. He felt quite certain that the question would be adequately raised and considered at San Francisco.

Sir Michael Myers (New Zealand) replied that the delegates at San Francisco would, in all likelihood, be laymen with respect to this problem and would need the help of this Committee. He urged that the sense of the meeting be taken on his suggestion.

Ambassador Cordova (Mexico) observed that everyone was desirous of having the Committee finish its work. But the invitations to this Conference had stated that if the Committee could not finish its work in Washington, it would be able to continue as a committee in San Francisco.

Mr. Preuss of the secretariat confirmed Ambassador Cordova's statement that the invitations had declared that the Committee would continue its work at San Francisco if necessary, and then report there to the appropriate Commission.

Dr. Moneim-Riad Bey (Egypt) urged that the Committee ought not to leave problems of this kind wholly to laymen and, in view of the short time remaining, that the Committee should decide to continue its work as a committee of jurists at San Francisco

Mr. Fitzmaurice thought there was no question of having this matter decided by laymen. He had no doubt that the Commission which would deal with these problems at San Francisco would include jurists, and laymen would be assisted by jurists, and he viewed it as merely a matter of convenience whether to state in the Report that the Committee must continue to function at San Francisco, or to approve a finished Report here and let the San Francisco commission itself complete the unfinished portions. He preferred the latter course.

Mr. Fahy (United States) suggested a possible accommodation of views, namely, that the Committee should now approve a final report but advise the Conference that it reserved the right to meet again at San Francisco and further advise the Conference if it were thought desirable.

Mr. Fitzmaurice strongly approved this suggestion.

Judge Delgado (Philippine Commonwealth) thought there was an inconsistency in reporting to the San Francisco Conference the result of its work while planning to meet again "if desirable" and that in fact its work was not finished. He thought it best to decide to continue the Committee at San Francisco.

Mr. Fitzmaurice thought there was no inconsistency in the Committee's approving a report at this stage and then merely holding itself in readiness to meet again if the situation at San Francisco should make it seem desirable.

Sir Michael Myers (New Zealand) declared that his understanding was that the Committee was to deliberate in Washington and continue its work in San Francisco as well if it should prove necessary.

Dr. Moneim-Riad Bey (Egypt) reiterated the view that the Committee should adjourn in Washington with the understanding that it would continue in San Francisco.

Mr. Fahy (United States) stressed the importance of getting into the hands of the San Francisco Conference as soon as possible everything that the Committee had accomplished, even though further work by the Committee might prove necessary.

Mr. Fitzmaurice wished to advance certain procedural considerations. There was already a proposed list of commissions for the San Francisco Conference and one of these was a commission dealing with the Court. To have this committee and that commission existing and deliberating side by side would present a distinctly awkward situation, in his view. The Committee should adjourn and leave it to the Chairman, Mr. Hackworth, to reconvene it if in the light of developments at San Francisco it should seem necessary. He felt strongly that this was the proper course and, if there were no further strenuous objection, would consider that the Committee approved it.

Professor Basdevant (France) then continued his reading of the Report.

With respect to Article 3, Dr. Moneim-Riad Bey (Egypt) requested that there be added in the Report a line explaining that one of the foremost reasons for retaining the present size of the Court was to permit an adequate representation of all legal systems of the world.

With respect to Article 27, Dr. Moneim-Riad Bey suggested that the Report add some reference to the Committee's lengthy discussion of the differences between the special Chambers under the old Statute and those set up in the new one. Mr. Fitzmaurice (United Kingdom) wondered if the difference was not sufficiently obvious in the text of the Statute itself so as not to require further explanation, and this seemed to be the general view.

Preceding Article 29, the Rapporteur had noted that the Committee had preserved the sequence of sections in the old Statute, even where it did not seem strictly logical, in order to preserve simplicity of reference. Judge Hudson suggested that the importance of this principle warranted noting it at the beginning of the Report. Some opposition to the suggestion was voiced, and it was agreed, on Mr. Jessup's suggestion, that the Rapporteur should merely add some clause emphasizing his statement of the principle.

Professor Bailey (Australia) desired some brief additional exposition of the changes which had been made in Article 26, dealing with special Chambers. Judge Hudson concurred in this view, observing that the Statute had undergone considerable change at this point and that it deserved more emphasis.

With respect to the comment on Article 30, Judge Hudson suggested that there should be some explanation of the reason for the addition of paragraph 2 of Article 30.

The Chairman remarked that the minutes of the Committee's discussions would be available at San Francisco for reference on such points. The paragraph was then adopted as read.

With regard to the comment on Article 36, several delegations wished to see inserted a notation that the jurisdiction of the Court extends to all justiciable cases on matters of a legal nature which might be submitted to it. After a discussion of the difficulties which would arise as a result of the adoption of these proposals, it was decided not to include such a statement.

Dr. Moneim-Riad Bey (Egypt) suggested adopting compulsory jurisdiction with a proviso permitting reservations. It was sugge ed by the Chairman that in view of previous decisions it was preferable to submit two texts as suggestions, rather than recommendations.

The comment was then approved.

With respect to the comment on Article 37, Dr. Moneim-Riad Bey suggested the deletion of the last sentence which said that if the old Court disappeared, a large number of international engagements respecting jurisdiction would be seriously jeopardized. The Chairman thought that the text succeeded in presenting the point for the consideration of the delegates at San Francisco. The Rapporteur said that this was intended, that there actually is such a risk and that this is properly set forth. For example, France has such a treaty with Spain incorporating compulsory jurisdiction in certain cases. Since Spain is not a party to this Statute, the treaty will have to be renegotiated. The risk is evident.

Mr. Reed (Canada) suggested saying "might run the risk" instead of "will run the risk". Dr. Gjurgjevic (Yugoslavia) suggested corresponding changes in the French text. It was agreed to alter the texts in this sense.

With respect to the comment on Article 38, Judge Hudson thought that this gave the impression that it was desired to change the text, but that this was not undertaken for lack of time. The text was amended to state simply that this was not the opportune time to undertake such a revision.

ith respect to Article 65, Dr. Escalante (Venezuela) suggested adding a note regarding his suggestion that public international organizations be permitted to ask for advisory opinions. An amendment in this sense was approved.

Mr. Jessup (United States) referred to the use of brackets in the second paragraph of Article 65 which did not conform with the English text. It was left to the drafting committee to reconcile the two texts.

With respect to the comment on the new Article 69 concerning amendments, the Chairman suggested deleting the first sentence, on the ground that it might prejudice the decision already reached with respect to the possible further meeting of the Committee at San Francisco. He thought that if the passage were deleted, the matter would be left in a neutral sense.

Dr. Moneim-Riad Bey (Egypt) said that the relationship of the Statute to the Charter of the Organization had been discussed extensively at the beginning of the Committee's deliberations and it had been agreed to leave it until the end. He inquired whether a notation to this effect should be included in the Report.

The Chairman suggested that this was not necessary. He thought it obvious that the Charter of the Organization must contain provision for the Statute and that such provision is already included in the Dumbarton Oaks Proposals which would doubtless be reproduced in the Charter.

Judge Hudson said there was already a reference to the matter in the comment on Article 1.

The Chairman suggested as a final point in the report that something be said about the numbering of articles and paragraphs.

Mr. Fahy (United States) then expressed appreciation and gratitude to the Rapporteur for the felicitous manner by which he had performed a very arduous task. This statement received warm applause from the Committee.

The Rapporteur expressed his thanks and added a word of thanks to all of the members of the secretariat.

The meeting adjourned at 11:40 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 85
G/72
April 19, 1945

SUMMARY OF THIRTEENTH MEETING

Interdepartmental Auditorium, Conference Room B

Thursday, April 19, 1945, 3:15 p.m.

The meeting was opened by the Chairman, Mr. Hackworth (United States).

The Chairman stated that since the draft Statute and the Rapporteur's report had been approved by the Committee the previous evening, the next question related to the manner of presenting these documents to the San Francisco Conference. The Chairman suggested that a very brief final act be submitted, to which the draft Statute and the report would be attached. This final act would be in five languages and would be signed by the various members of the Committee. This would make it unnecessary to sign both the Statute and the report; it would be necessary merely to sign a brief statement. The Chairman then proposed the text of the final act to be submitted.

> "Final Act
> of the
> Meeting of the Committee of Jurists for the Preparation of a Draft of a Statute for the International Court of Justice to be Submitted to the United Nations Conference on International Organization
>
> Pursuant to the invitation extended on March 24, 1945 by the Government of the United States of America, on behalf of itself and of the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the Republic of China, a Committee of Jurists, as enumerated below, met in Washington on April 9, 1945:
>
> [Here should follow in alphabetical order the list of the countries represented and the names of the representatives and advisors.]
>
> The Committee held sessions beginning on April 9 and ending on April 20. It has completed its work and has unanimously agreed upon a draft of a statute of an international court of justice as referred to in Chapter VII of the Dumbarton Oaks Proposals, and a Report to accompany that draft, for submission to the United Nations Conference on International Organization, both of which documents, in the Chinese, English, French, Russian and Spanish languages, are attached hereto.

In testimony whereof the undersigned have signed the present Final Act likewise in the Chinese, English, French, Russian and Spanish languages at the City of Washington on the twentieth day of April, one thousand nine hundred and forty-five."

In this way, the Chairman stated, the members of the Committee could signify their approval of these documents that are being submitted to the San Francisco Conference. These documents, he noted, are only recommendations since this Committee was not authorized to prepare a final document.

Judge Delgado (Philippine Commonwealth) moved that the Chairman's suggestion be adopted. The motion was seconded by Mr. Fitzmaurice (United Kingdom), by Dr. Wang (China), and by Minister Novikov (Soviet Union).

Professor Basdevant (France) stated that he had heard the Chairman's proposal with great interest. He noted that this Committee of Jurists was assigned to do preparatory work for the San Francisco Conference and that the result of this work should be presented in the most appropriate form to the San Francisco Conference. It would be appropriate, Professor Basdevant said, for a conference of diplomats to sign a final act, but it would not be appropriate for a committee of jurists to do so. He thought that the Chairman should transmit these documents in a letter personally written by the Chairman, with the documents attached to the letter, in five languages. He proposed this as the simplest method since the members of this Committee are technicians and have prepared recommendations. He did not think that the members of this Committee would have to sign a final act here, as this would be superfluous.

Dr. Moneim-Riad Bey (Egypt) supported Professor Basdevant's suggestion. He thought that the Rapporteur's report would be the most important document to go to the San Francisco Conference; and that this report presents this Committee's views fully. He recalled that the report of the jurists of 1920 constituted a standing reference document, and he believed that Professor Basdevant's report would be the same kind of document. He felt that the Committee had no mandate to sign anything since it could not bind the governments, and that the Committee's function was to discuss these problems freely as jurists. He noted that a neighbor had said that he could not sign something that he could not understand since the document was not in Arabic.

Judge Delgado (Philippine Commonwealth) stated that with all due respect to Professor Basdevant's suggestion and to the statement of tho representative of Egypt, he thought the Committee should sign the final act and appoint the Chairman, the Rapporteur, and another as a committee of three to be the bearers of the documents to the San Francisco Conference. He agreed that the representatives were not authorized to bind their governments but thought that the representatives could sign their names to what they had agreed upon and that it would add a little tone for them to sign the final act. Judge Delgado therefore moved that the Chairman's suggestion be adopted.

Professor Bailey (Australia) stated that he supported Professor Basdevant's suggestion. He felt that the final character of the Committee's work should be emphasized as little as possible. He noted that the report brings out the fact that the Committee was invited to do what was possible here; but that it is plainly an incomplete report of matters not fully accomplished, since many points had been left open. He would deprecate the adoption of a document terminating these proceedings which did not emphasize the interim and provisional character of what had been done. The previous night, he noted, the Committee did not have the final text in any language, and the motion put by the Chairman's deputy was simply that the text of various paragraphs would be accepted if no objections were raised. Professor Bailey said that he personally would not care to sign a document which he had not seen in written form; and he noted that the English and French texts had been one day in arrears, with the changes being made orally and the Rapporteur indicating what changes were to be made. In short, the representatives had not had a chance to study the final report carefully. The Chairman noted that the report was now in complete form and that it could be examined before the following day.

Sir Michael Myers (New Zealand) declared that the motion stated that the act should be called a final act, but he could not regard it as a final act. He moved, as an amendment, that after the words "final act" there should be inserted:

> "subject to further consideration of various questions raised in the Report after these questions have been decided by the Conference of The United Nations at San Francisco."

Without such qualification, the title would be misleading since the Committee had not and could not finish its work without directions from the Conference at San Francisco.

Judge Delgado (Philippine Commonwealth) stated that he would accept this amendment to his motion if his seconds gave their approval.

Minister Novikov (Soviet Union) observed that there seemed to him to be some misunderstanding of the term "final act". The act was not meant to be an official act but a means of concluding the work done in Washington. The introduction of the consideration that representatives could not bind their governments would serve only to complicate the question because the Committee's action would not be an official act. He thought the procedure suggested by the Chairman would be more satisfactory than that proposed by the Rapporteur.

Mr. Fitzmaurice (United Kingdom) supported Minister Novikov's view and called attention to two points of confusion which had appeared in the discussion. The term "final act" was simply a formal term for a formal document summing up the work of a conference. For example, the Civil Aviation Conference adopted a final act although it provided for work to be done by an organization to be established. He saw no difficulty in drawing up a final act for the session in Washington without prejudice to further work at San Francisco. The other point of confusion was the nature of the act of signing. He called attention to the fact that the phraseology did not commit the governments and that the signers would act in their personal capacity as jurists. This seemed to him to remove objections. The only question remaining was whether the procedure suggested by the Chairman was more desirable than some other. He thought that it was, for the work was important and the recommendations should, therefore, be presented in the weightiest possible form. He believed that a document signed by all would be impressive, and he, therefore, supported the Chairman's suggestion.

The Chairman stated that he wished to clear up doubts and called attention to the invitation issued for this meeting, which asked governments to send representatives to prepare recommendations to be studied at San Francisco. It was obvious, therefore, that the Committee was not preparing a final document. "Final act" was a term of art. He felt that all were in agreement in the sense that they agreed to a majority of the articles and to the presentation of alternative drafts of certain articles. There was no disagreement that alternatives should be submitted. He thought there was agreement that the work done was in the nature of recommendations, which did not bind governments. He agreed with Mr. Fitzmaurice that it was desirable to lend dignity to the presentation of the work of the Committee. All that the final act would say would be that this was the product of the Committee's effort. There might be many changes made at San Francisco.

Dr. De Bayle (Costa Rica) suggested that there be added to the final act a paragraph charging the Chairman with the transmission of the documents.

M. Star-Busmann (Netherlands) declared that he shared the view of the Rapporteur and felt that the procedure which the latter had suggested was logical. He stated that he could not sign a document which he did not understand. The Chairman said that even if the representatives did not understand all the translations they would certainly understand some of the drafts.

Professor Bailey (Australia) called attention to the fact that the final act stated that the representatives had unanimously agreed. The Chairman said he believed that the representatives had so agreed in the sense which he had described above.

Professor Bailey (Australia) thought that it would be impossible to agree to documents which the representatives had not seen in their final form before the time for signing.

Mr. Chief Justice Farris (Canada) asked why the representatives should hesitate to sign documents if they trusted the Chairman to transmit them. He thought it would show a sense of responsibility and a willingness to rise to a great opportunity if the representatives signed.

Dr. Moneim-Riad Bey (Egypt) declared that the Chairman's signature represented all and recalled that it had been decided at the first meeting that the report should be prepared and signed in English and that translations should be prepared if possible. This procedure had been adopted and therefore the Chairman might sign in the name of all the representatives.

Mr. Simpson (Liberia) called attention to the invitation which had asked the governments to send representatives to this meeting. If the work of the Committee had been accomplished, he did not see why the representatives could not sign. He, therefore, agreed with the Chairman and with Mr. Fitzmaurice. The representatives had come to prepare a draft Statute. Why should they not sign it? In fact, what would their governments think if they did not sign it?

Professor Bailey (Australia) said that he was sorry to be troublesome, and he appreciated that the proposed final act would not be final in any sense. He reminded the Chairman, however, of the status of Article 36 which appeared in the form of alternative drafts. He recalled that there had been strong objections by various groups to each alternative, and it had been left that the Rapporteur would call attention to the objections raised to each draft, for example, the absence of the word "justiciable" in the optional clause draft, and the absence of any provision for reservations in the compulsory jurisdiction draft. Professor Bailey then stated that if the implications of signing this document were that the text was unanimously agreed to, the Australian representative could not accept such an implication. He thought that it was entirely proper for the Chairman to transmit the provisional text to the

San Francisco Conference. He added that nobody wished to shirk responsibility, but he pressed the wisdom of the Rapporteur's suggestion that this is not a document which the representatives of the various countries ought to sign. He thought that the document ought to be transmitted by the chief officer of this Committee with the names of all the participating members.

Dr. Gómez-Ruiz (Venezuela) stated that it had been agreed to sign the two texts of Article 36 and also the two texts of Articles 4 to 12 inclusive and nothing more. He thought it was completely proper to say that this Committee agrees to sending these drafts to the San Francisco Conference and nothing more.

Ambassador Mora (Chile) stated that in preparing a draft Statute for San Francisco the Committee was making clear that this work was done by this Committee when it signed the final act. This does not constitute an obligation upon the various governments to accept the texts agreed upon in the preparatory Statute. This merely states that the Committee of Jurists met in Washington, finished its tasks so far as possible, and that the accompanying documents are the result. The Rapporteur's report shows the positions taken by the various representatives on different points. He thought that the members of the Committee were morally obligated to sign the final act in order to show cooperation within the United Nations; and that the Chairman could send a letter under his own signature, stating that the documents attached were the official documents sent to the San Francisco Conference. This could show that the Committee has done its work as charged and transmits the result to San Francisco. (According to the interpreter the Ambassador had said that those who are reluctant to sign the documents might make reservations in signing the final act; but Dr. Gómez-Ruiz (Venezuela) called attention to the fact that the Ambassador had not proposed this. The Chairman added that he, too, disliked the idea of reservations.)

M. Star-Busmann (Netherlands) asked if the fact that the Committee had discussed the English and French texts only would be mentioned in the letter to the San Francisco Conference. The Chairman doubted the necessity of this, since the French and English texts had been used merely as a matter of convenience, and the documents are now being put into five languages. The Chairman felt that the four sponsoring powers should be entitled to have documents put in their languages, English, Russian, and Chinese; that the Statute should also be in French because the original Statute was in French; and that as a matter of courtesy, the documents should be in Spanish because of the large number of Spanish-speaking representatives present and also to be at San Francisco. M. Star-Busmann stated he had no objection to the five languages, but he would like to see the fact mentioned that the drafts discussed had been in English and French. The Chairman said he would prefer not to feature one language over another, and that to mention this would merely be stating a historical fact. However, he said, this would be for the Committee to decide.

Dr. Kernisan (Haiti) observed that if he understood the question correctly, the Committee was discussing the method of transmitting its work to the San Francisco Conference; that some felt a final act was unnecessary since this was only a technical conference, but that others took a different view. He thought that since this was a preparatory conference of a technical nature and the representatives expressed technical opinions of their countries and had agreed on a certain number of points embodied in the Statute, this result must be authenticated and there must be a document embodying the Statute signed by all members of the Committee. If the report and Statute were transmitted without this, there would be no material proof that these were actually the results of the Committee's collaboration; and he felt therefore that an act of some kind was necessary.

Minister Novikov (Soviet Union) stated that he was unwilling to prolong the discussion of the languages in which the final act should be drafted. He felt, however, that various arguments which looked as though they had merely a technical meaning gave the impression of assuming a political character. He had the impression that there was objection to the use of the languages of two of the sponsoring powers. He was sorry to state this impression but he felt obliged to call attention to it.

Professor Basdevant (France) declared that he had avoided political implications in his remarks. He thought, and continued to think, that his suggestion was the best course to pursue. Even some of those who had supported the suggestion of the Chairman felt it necessary to suggest amendments. Furthermore, even if the Chairman's suggestion were adopted, the document would have to be transmitted. This transmission would have to be made by the Chairman. He thought it was simpler for the Chairman to make the transmission since this would avoid giving a wrong impression of the character of the meeting of the Committee. The Committee had been preparing recommendations and its work was not in completed form. A committee at San Francisco would prepare more authoritative texts on which the Conference would have to decide. This committee would not sign a final act but would merely transmit its work to the President of the Conference This would be the same as the procedure which he proposed here. He felt it was the simplest method and would divide the Committee least.

Mr. Chief Justice Farris (Canada) stated that he was obliged to leave the session and introduced Mr. Chipman, who would be the representative of Canada at San Francisco, replacing Mr. John Read, the Legal Advisor.

Dr. Moneim-Riad Bey (Egypt) declared particularly to the representative of the Soviet Union that he had never had the slightest idea of pressing a prejudice against the use of any language. He called attention to the fact that this Committee had met under the auspices of the four sponsoring governments and expressed his gratitude to all of them. He further pointed out that he had not pressed a natural desire for the employment of his own language and stated that he would be glad to sign whatever his colleagues agreed to.

Mr. Fahy (United States) declared that the suggestion of the Chairman seemed to him most appropriate. He thought it was appropriate that the documents should go to the Conference in five languages, for three of these languages were the languages of the sponsoring powers and the other two were widely used. He asked who could say that this procedure was inappropriate. One objection which had been raised was that there were no final copies. The Committee, however, had been discussing drafts with meticulous care and there should be a presumption, until it was proved false, that the draft correctly represented the changes agreed upon. Furthermore, any errors which might have crept in could be corrected. Another objection was that some of the representatives had scruples about signing documents in languages with which they were not familiar. He thought that the translations were conscientious and scrupulous, and if errors crept in, they could be corrected. The third objection was that the work was not final, but he felt that this had been adequately met by the Chairman, who had stated that "final act" was a term of art. All that the Committee would be doing would be finishing its work here and transmitting the results to the Conference at San Francisco.

Professor Bilsel (Turkey) stated that he felt the discussion was exaggerating the importance of languages. He noted that French had formerly been considered preeminent as the language of diplomacy, but that English had been admitted as an official language at the Paris Peace Conference in 1919. Since that time there had been a trend toward the use of more languages, and there were increasing demands for the use of various languages. For example, he would like to ask for the use of Turkish. During this war there had been great insistence upon the independence of states, and one of the attributes of independent states was the right to use their own languages. He thought that the representatives could make a reservation with regard to documents which they did not understand. He called attention to the fact that committees did not generally sign documents, but he felt that this group was a commission rather than a committee and that it was not a part of the San Francisco Conference.

Several of the representatives called for a vote upon the question.

Sir Michael Myers (New Zealand) called attention to the fact he had presented an amendment to the motion.

Judge Delgado (Philippine Commonwealth) declared that he had said he would accept the amendment if his seconds agreed. He had not, however, heard any statement from the seconds.

The Chairman suggested that the Committee take a short recess to discuss the matter informally.

The Chairman stated that during the brief recess a draft text had been proposed which he hoped would meet with the approval of the representatives. This document would be called a "record" instead of a "final act". The Chairman then read the text as follows:

> "Record
> of the
> Meeting of the Committee of Jurists for the Preparation of a Draft of a Statute for the International Court of Justice To Be Submitted to The United Nations Conference On International Organization
>
> Pursuant to the invitation extended on March 24, 1945 by the Government of the United States of America, on behalf of itself and of the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the Republic of China, a Committee of Jurists, as enumerated in the annexed list, met in Washington on April 9, 1945:
>
> The Committee held sessions beginning on April 9 and ending on April 20. It has completed its work and transmits the attached draft of a statute of an international court of justice as referred to in Chapter VII of the Dumbarton Oaks Proposals, and a Report to accompany that draft, for submission to The United Nations Conference on International Organization, both of which documents are in the Chinese, English, French, Russian and Spanish languages.
>
> In testimony whereof the undersigned have signed the present Record likewise in the Chinese, English, French, Russian and Spanish languages at the City of Washington on the twentieth day of April, one thousand nine hundred and forty-five.
>
> /Signatures follow here./"

The Chairman noted that an annexed list had been provided for in order to avoid repeating the list of names in the center of the document itself. He called attention to the fact that the statement that the documents had been unanimously agreed to had been eliminated, to meet some of the objections raised. He then asked if the Committee would approve this document, so that it could be put into five languages for signature the following day.

Professor Basdevant (France) said he did not want to resume the lengthy discussion on this point, but he wished to ask the Committee if it preferred the Chairman's proposal or his own suggestion that the Chairman transmit these documents. He said that his objections were still very strong.

The Chairman stated that if this record were signed as he suggested, it would be transmitted to the San Francisco Conference by the representatives of the four sponsoring powers, as a matter of courtesy. He then called for a vote whether the Committee approved the procedure proposed by himself or approved Professor Basdevant's proposal. Twenty-one members of the Committee voted in favor of the Chairman's proposal, and six favored Professor Basdevant's proposal.

The Chairman then said that a list of the representatives with their titles would be circulated immediately so that the heads of the different delegations could indicate who should sign the document the following day. It was agreed that the Committee would meet at 2:30 p.m. on April 20, in a very short session, to sign this document. Upon a motion by Mr. Fitzmaurice (United Kingdom), seconded by Ambassador Cordova (Mexico), it was agreed that more than one jurist in each delegation would be allowed to sign this document.

The Chairman then called attention to the fact that English and French copies of the Rapporteur's report were available.

The Chairman also announced that Dr. James, the Law Librarian of the Library of Congress, had sent him a letter stating that he would be glad to have the members of the Committee visit the Library of Congress, particularly the law library. The Chairman suggested that perhaps some of the Committee members might care to be conducted through the Library of Congress by Dr. James at 10:30 the next morning.

The Chairman then stated that the representative of Egypt had handed him a statement requesting that a document, a note on Article 9 of the Permanent Court of International Justice and the position of the Moslem system, be made part of the record so that that system of law could be kept in mind in this work. It was agreed that this document should be incorporated in the record.

The Chairman also called attention to a note received several days ago from the Minister of the Netherlands stating that he had been designated that government's representative on this Committee. This was also incorporated in the record.

The meeting adjourned until 2:30 p.m. on April 20.

SUBCOMMITTEES
SOUS-COMITÉS

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 28
G/20
April 12, 1945

SUBCOMMITTEE ON ARTICLES 1 AND 2

Summary of First Meeting

April 11, 1945, 3 p.m.

Present: Sr. Ernesto Dihigo, Cuba; Sir Michael Myers, New Zealand (with Mr. Colin C. Aikman, Adviser); Mr. N. V. Novikov, Union of Soviet Socialist Republics (with Professor S. B. Krylov, Adviser).

Sir Michael was asked to act as Chairman. The subcommittee had before it for consideration the proposals of the United Kingdom (Jurist 14) and the United States (US Jur 1) respecting Article 1, and the proposals of Venezuela (Jurist 7) and Egypt (Jurist 8) for modification of Article 2.

Sir Michael suggested a revised version of Article 1 as it appeared in the United States proposals, including therein a statement that the PCIJ "shall remain in existence and shall constitute the chief judicial organ of the United Nations, but shall henceforth function in accordance with this Statute".

Sr. Dihigo proposed a statement, "The Permanent Court of International Justice regulated by this Statute shall be the principal judicial organ of the United Nations". Sir Michael pointed out an advantage of his own version, namely, that the words "henceforth shall function" took account of the possibility of matters presently pending before the old Court, by providing in effect for their continuance according to the new Statute.

Here Mr. Novikov called attention to the difficulties in the way of continuing the old Court. Would States like Spain, which adhered to the old Court's Statute but which are not among the United Nations, be members of the new Court? How could the new Court be regarded as a continuation of the old one without the assent to modification of the existing Statute of all states parties to it?

Sir Michael readily acknowledged the difficulties suggested. On the other hand, it was perhaps equally impossible to terminate the existence of the old Court without universal assent of the parties to its Statute, and he thought it would be undesirable to have two courts existing at once.

Sr. Dihigo thought the legal problems equally vexing whether the effort be to continue the old Court without the presence of all its adherents or whether an entirely new court be set up.

Sir Michael asked Mr. Novikov whether it was his view, then, that there should be a new court, unconnected with the old. Mr. Novikov replied in the negative, saying that he was not authorized by his Government to take a position but that he was merely raising the problems.

Sir Michael then observed that it might be better to omit from the article any suggestion of the continued existence of the PCIJ. On reflection, however, he found it difficult to describe the new court adequately in Article 1 without some reference to the PCIJ, although he wished to avoid passing on the question of continuity. From the discussion there emerged this draft of the first sentence of Article 1:

> "The principal judicial organ of the United Nations shall be the Permanent Court of International Justice, which shall henceforth function in accordance with the provisions of this Statute."

At this point the subcommittee considered the United Kingdom's proposal that the second sentence of Article 1 as it now stands be dropped. Sir Michael and Mr. Novikov were amenable to this suggestion, but Sr. Dihigo thought it important that the sentence be retained. Sir Michael and Mr. Novikov were not averse to doing so, as they thought there was no particular objection to the provision.

Mr. Novikov, however, stated again that he could not assent for his Government on the main question presented by Article 1, namely, the question of continuity. He desired to have the decision postponed.

Sir Michael suggested that the draft under discussion might be more acceptable to Mr. Novikov if the word "henceforth" were omitted. He went on to say that his personal view was that it made very little difference whether the new Court was a continuance of the old one or not.

Mr. Novikov pointed out that if the existing Court were not continued, it would be necessary to amend a great many treaties which provide for referring disputes to the existing Court. He added, however, that this was not a problem so far as the Soviet Union was concerned, because the Soviet Union is not a party to any treaties which refer to the PCIJ.

Sr. Dihigo reiterated his view that the legal difficulties are about evenly balanced as between continuing the old Court and dealing with the problems pointed out by Mr. Novikov. But on the whole he rather favored continuity.

Mr. Aikman, Adviser to Sir Michael, proposed that the subcommittee present a memorandum on the issue of continuity, not attempting to decide the question but merely outlining the considerations on both sides. He thought a decision of this basic question was necessary to the drafting of Article 1. With the latter Mr. Novikov and Prof. Krylov seemed to agree, but they thought it unnecessary for the subcommittee to present a memorandum.

Sir Michael then proposed that the subcommittee recommend a draft of the first sentence of Article 1 in the following form:

> "The Permanent Court of International Justice, established by the Protocol of Signature of December 16, 1920 and the Protocol for the Revision of the Statute of September 14, 1929, shall constitute the principal judicial organ of the United Nations and shall henceforth function in accordance with this Statute."

It was agreed to leave the second sentence as it now stands, except that Sr. Dihigo wished to strike out the words "of arbitration" in the phrase, "the special tribunals of arbitration to which States are always at liberty to submit their disputes". He thought the words an unnecessary limitation. His suggestion was accepted.

Sir Michael then suggested that this draft be made the subcommittee's recommendation, and that the report state that the Soviet Union's representative agreed as to the form but reserved his assent until instructions should be received by him from his Government. Mr. Novikov, however, was unwilling to have his agreement expressed even in this limited fashion. He explained that in his view the question was not merely textual, but went to the basic character of the tribunal to be established. He preferred to state that the U.S.S.R. postpones its decision. It was agreed that the report should be prepared accordingly.

The subcommittee then considered Article 2 and the proposed revisions thereof. Sir Michael and Mr. Novikov thought the present form acceptable and difficult to improve upon. Sr. Dihigo explained that the Venezuelan proposal was meant to remove the possibility that technicalities, such as residence, might disqualify a candidate under the present Statute's clause, "who possess the qualifications required in their respective countries for appointment to the highest judicial offices". But the subcommittee did not regard the objection as a serious one, and agreed to recommend retaining the present Article 2.

The subcommittee adjourned, with the understanding that Sir Michael would prepare a report to submit to the Committee on the following day.#

Adjournment: 4 p.m.

#Jurist 25

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D.C.

RESTRICTED
Jurist 25
G/19
April 11, 1945

REPORT OF SUBCOMMITTEE ON ARTICLES 1 AND 2

The subcommittee appointed to consider Articles 1 and 2 of the draft Statute have to report as follows:

1. That Article 1 should read:

"Article 1.

The Permanent Court of International Justice established by the Protocol of Signature of December 16, 1920 and the Protocol for the Revision of the Statute of September 14, 1929 shall constitute the principal judicial organ of the United Nations and shall function in accordance with the provisions of this Statute. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals to which States are always at liberty to submit their disputes for settlement."

(Translation)

1. L'Article 1 devrait être ainsi concu:

"Article 1.

Indépendamment de la Cour d'Arbitrage organisée par les Conventions de La Haye de 1899 et 1907, et des Tribunaux spéciaux d'arbitres auxquels les Etats demeurent toujours libres de confier la solution de leurs différends, la Cour Permanente de Justice Internationale établie par le Protocole de signature du 16 Décembre 1920 et le Protocole pour la révision du 14 Septembre 1929, sera l'organisme judiciaire principal des Nations Unies et fonctionnera conformément aux dispositions du présent Statut."

* * *

Note: The Cuban and New Zealand delegates are agreed upon the article as above. The Soviet delegate is not in a position to agree at the moment as there is an aspect of the matter which is still under consideration by his Government, but he expects to be able to intimate his decision before the Committee holds its final plenary session in Washington.

In settling the draft Article as above the subcommittee has had in view the possibility of matters arising under existing treaties and conventions whereby disputes may be referable to the existing Court.

2. That Article 2 should remain as in the present Statute without alteration, thus:

"Article 2.

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from among persons of a high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law."

(Translation)

2. L'Article 2 demeure tel qu'il est au présent Statut, comme suit:

"Article 2.

La Cour Permanente de Justice Internationale est un corps de magistrats indépendants, élus sans égard à leur nationalité, parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international."

* * *

MICHAEL MYERS

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 32
G/24
April 11, 1945

SUBCOMMITTEE ON ARTICLES 3 TO 13

Summary of First Meeting

April 11, 1945, 3 p.m.

Present: Ambassador Roberto Cordova (Mexico), Chairman; Mr. John E. Read (Canada); Dr. Wang Chung-hui (China); Dr. Helmy Bahgat Badawi (Egypt, Adviser); Professor Jules Basdevant (France); M. E. Star-Busmann (Netherlands); M. Lars J. Jorstad (Norway); Professor S. A. Golunsky (Union of Soviet Socialist Republics, Adviser); and Mr. G. G. Fitzmaurice (United Kingdom).

On motion of Mr. Fitzmaurice (United Kingdom), Ambassador Cordova (Mexico) was chosen as Chairman of the meeting. Ambassador Cordova opened the meeting by stating that it was his understanding that the subcommittee's task was to consider Articles 3 and 4 and subsequent articles as to election of judges of the Court. He said he was also of the opinion that the delegate of the United Kingdom had submitted some suggestions regarding the subject of elections and that they might be taken up by the subcommittee. The proposals are contained in the document designated Jurist 14.

Mr. Fitzmaurice (United Kingdom) stated that his Government supports generally such amendments of a formal character in the several clauses of the Statute as may be necessary to replace references to the League by references to the United Nations Organization and its Charter, etc., and that no proposals of detail would be made in his suggestions on this purely formal matter. The proposals which he made, so far as they relate to the constitution of the Court, were directed to two main objects. Firstly, they are inspired by the conception that the object should be to elect the best possible Court, irrespective of considerations of nationality; secondly, they seek indirectly to realize, so far as possible, the largest representation on a geographic basis. He stated that he thought it would be advantageous to reduce the number of judges and that he had thought for some time that 15 judges (with 2 nationals making 17) was too large a number. With 15 judges there might be many dissenting opinions. There might be as many as seven dissenting opinions and he thought it might be better not to have so many dissents. Also, in a very large court the quality of decisions tends to be low. He stated that one judgment represents the judgment of the Court, but that each of the dissenting judges would probably give an opinion all his own. He would propose the following method: Each government a party to the Statute of the Court should nominate a candidate, who should be one of its own nationals and who would automatically, by the fact of nomination, became a member of the Court. Out of the "members" of the Court nine persons would be elected as judges of the Court by the ordinary machinery of election. Those members not elected as judges would be available at all times to serve as additional or supplementary judges or to serve as ad hoc judges in cases in which their countries were involved as litigants but did not have one of their nationals as a regular judge of the Court. If the scheme were put into effect, it would be possible to reduce the number of regular judges of the Court without prejudicing the principle of representation on a geographic basis. There would also be full provision for the possibility of judges being absent through illness, leave, or other causes.

Mr. Fitzmaurice stated that they, of course, recognized fully that geographic considerations could not be omitted in cases of this kind, and that is why they combined the idea of nine judges with the other idea of having a separate body of members or court of potential judges. If their proposal for nomination of candidates were not adopted it would be difficult to have a number as low as nine. He still felt that 15 or 17 is too large a number. Nine might be too small.

Professor Golunsky (Soviet Union, Adviser) stated that the term "member of Court" implied active participation in the work of the Court. The "members" proposed by the United Kingdom would act only occasionally. He stated that the term "members" creates an illusion that all countries having members are represented on the Court and this is not true. He said that he agreed with the British delegate but suggested that the term "members" should be changed and some other term should be used. He suggested that the word "candidates" be used instead of "members".

Dr. Badawi (Egypt, Adviser) stated that the method of nomination of judges should be taken up first and the question of the number of judges could subsequently be taken up.

Ambassador Cordova (Mexico) said that if there was no objection to the proposal of the Egyptian delegate the subcommittee would take up first the question of nomination of judges and later the question of the number of judges. There was no objection. Ambassador Cordova understood that two suggestions had been advanced. One was that the candidates should be nominated by the respective governments and the other was the method provided for in the Statute of the Court.

Mr. Fitzmaurice (United Kingdom) stated that his Government took the view that a government should nominate only its own nationals.

Mr. Read (Canada) asked if they were to deal with the various points one by one.

Ambassador Cordova (Mexico) stated that he was thinking of taking them up step by step, and that the first point to be discussed was nomination of candidates.

Mr. Read (Canada) stated that there were three points to consider: (1) whether candidates should be nominated by governments, (2) whether a country should nominate only its own nationals and (3) whether a government is to be restricted to one nominee.

Ambassador Cordova (Mexico) stated that the suggestion was that each government should nominate one of its nationals.

Mr. Fitzmaurice (United Kingdom) stated that one method might be to decide first whether there should be nomination by governments and not by national groups. If the decision is for national groups, then the point is finished. If by governments, further questions would arise, i.e., whether a government should be restricted to its own nationals and whether a government should be limited to only one candidate.

Ambassador Cordova (Mexico) stated that he was in favor of the new system of nomination by the government and that the procedure which the Statute provides is too complicated and unnecessary. All governments should share full responsibility in the nomination of their respective candidates.

Dr. Badawi (Egypt, Adviser) was in favor of nomination by governments but he thought that governments should present two candidates, one a national and another who is not a national.

Ambassador Cordova (Mexico) stated that the first question to be discussed is whether candidates should be nominated by governments.

Mr. Read (Canada) stated that his country was not a member of the Permanent Court of Arbitration and that they do not use the panels. There was a feeling in his country that the present method of nomination should be left as it is because it had worked well for a quarter of a century, and had certain advantages. He was of the opinion that it gives the Court respect among the masses of the people who think that the judges of the Court are nominated without regard for political consideration. However, there would be no great objection in this country to nomination by governments.

Professor Basdevant (France) stated that there are two different methods of selecting judges which could be used and that the question of nomination should be considered in the light of two methods: The first method, which is that of the Statute, provides for the nomination of candidates from whom the judges will be chosen. They will only be candidates and when the judges have been chosen these candidates will lose their official capacity and disappear. He said that there is also the question whether the candidates should be chosen by national groups or by governments. The second method, as presented by the United Kingdom, provides that those who are nominated as candidates will be members of the Court and will keep this official capacity for nine years. This would allow them to sit on the Court on various occasions. For this second method the nomination of those members of the Court should be done by the governments. In this method, he understood that the governments would name only one person and that person should be a national. He thought that there are two different concepts to consider. If the subcommittee would accept the United Kingdom's proposal it should be adopted in its entirety. But if it is not adopted he thought that the system providing for the nomination by national groups would retain its value. Therefore, he thought the subcommittee should consider this question in its entirety.

Mr. Fitzmaurice (United Kingdom) agreed that as pointed out by Professor Basdevant (France), there was a difference between the two methods. He thought you could have judges nominated by governments and that, even if the old system is retained, his government would want nomination by the government.

Professor Golunsky (Soviet Union, Adviser) thought the method of nomination by governments is better and simpler. He stated that it is thought the old system eliminates political influence but such influence exists even under the old system. He thought there is absolutely no use of keeping the old system. It was devised in order to have close connection between the Permanent Court of Arbitration and the Permanent Court of International Justice.

Dr. Wang (China) stated that he was very much in favor of direct nomination by the governments and that the present system is complicated and a little out of date.

M. Jorstad (Norway) was in favor of keeping the present system.

M. Star-Busmann (Netherlands) agreed with the opinion expressed by the representatives of the United Kingdom, China, and the Soviet Union to place responsibility of appointments of nomination of the members of the Court on the government. He stated that the question was not of such great importance for those who want to keep the present system because they could always use the national groups in their respective countries.

Dr. Gavito (Mexico, Adviser) stated that Mexico is also in favor of direct nomination by the government. He asked that one point of the British system be clarified, i.e., when would the term of the member of the Court be ended.

Mr. Fitzmaurice (United Kingdom) stated that his Government did not hold very strong views on the subject; it was largely a question of mechanics. The best thing would be to allow a judge to function for nine years, at the end of which time he would be released by another nominee.

Ambassador Cordova (Mexico) stated that in any case it would be taken care of in the drafting of articles and asked if the subcommittee were ready to vote. The proposal that candidates be nominated by governments was passed.

Ambassador Cordova said that the next question was whether there should be only one candidate and whether he should be a national of the nominating country.

Dr. Badawi (Egypt, Adviser) proposed that governments should nominate two candidates, one a national and the other not. If each government nominated only one candidate there is little possibility that its candidate would be elected.

Professor Golunsky (Soviet Union, Adviser) stated that this question could not be decided until a decision was reached by the subcommittee on the question whether or not the British system should be adopted.

Mr. Fitzmaurice (United Kingdom) stated that he did not think it would be incompatible with the British system.

Ambassador Cordova (Mexico) stated that he understood that the non-nationals would be eliminated as soon as a national is voted. Mexico is very much in favor of the system that each government suggest only one candidate because if one receives votes from other countries he would be elected. If you have only one candidate each candidate would have the same footing, one vote. It would be more democratic to give all candidates the same chance.

Mr. Fitzmaurice (United Kingdom) stated that he was in agreement.

Professor Golunsky (Soviet Union, Adviser) stated that he agreed.

M. Star-Busmann (Netherlands) stated that he agreed also, because it would simplify the whole question.

Ambassador Cordova (Mexico) asked if the members of the subcommittee were in agreement that there should be only one candidate.

Mr. Read (Canada) stated that he preferred to carry on under the present practice because it has been a definite advantage to some countries which had no judges.

M. Star-Busmann (Netherlands) stated that there would always be the possibility of voting for somebody else.

M. Jorstad (Norway) thought that States should nominate one of their own nationals and one of another nationality.

Ambassador Cordova (Mexico) put to a vote the question whether a government should nominate just one candidate of its own nationality. Five voted for one candidate of a country's own nationality and four in favor of the present system. He announced that the decision was that each government should submit only one candidate of its own nationality and pointed out that the next question to be considered would be the number of judges.

Dr. Badawi (Egypt, Adviser) brought up the question of Article 6 and asked if it should be maintained as it is. He raised the issue whether the subcommittee should not provide that governments should enact laws providing that they should consult their Highest Courts, etc., in connection with the candidates. He thought that they should be bound to do so.

Mr. Fitzmaurice (United Kingdom) stated that the London Committee went into that point and considered it carefully, but that they decided that the important thing was not to have the validity of the nomination open later. He stated that to avoid this it would be necessary to lay down very precise rules and that they felt that the task would be quite impossible to carry out, and it would not be possible to lay down precise rules.

Professor Golunsky (Soviet Union, Adviser) agreed with the representative of the United Kingdom.

M. Star-Busmann (Netherlands) thought the subcommittee would have good reasons to maintain the article in its present form.

Mr. Read (Canada) stated that in his country they could not consult academies but they carried out the spirit of the provision by consulting bar associations.

Dr. Badawi (Egypt, Adviser) stated that when he spoke of governments being bound to consult these various institutions he wanted to give force to this recommendation and he proposed that they should be bound to consult such institutions.

Ambassador Cordova (Mexico) stated that he saw objections because they might not have the candidates ready for the next election.

Professor Basdevant (France) stated that they always had complied with this form in France but that if it was made obligatory there would be all the difficulties pointed out by the representative of the United Kingdom as it would be up to the governments to make their nominations and as it would be difficult to tell the governments how to make their nominations.

Dr. Badawi (Egypt, Adviser) stated that he proposed this amendment because he thought that there would be less chance that this recommendation would be applied when it is to be done by governments and not by national groups.

He was willing, however, to leave the article as it is and proposed to change the words "national groups" to "governments".

Ambassador Cordova (Mexico) stated that the delegate of Egypt is willing to leave the text as it is and he therefore saw no reason to take a vote on that article. He stated that the next question would be the number of judges.

Mr. Read (Canada) asked if the subcommittee should not first decide whether the defeated candidates should have an official status as members of the Court.

Mr. Fitzmaurice (United Kingdom) agreed that that was the next question.

Ambassador Cordova (Mexico) said that the subcommittee should now take up the matter of status of the members of the Court. He suggested that the candidates should be members.

Mr. Fitzmaurice (United Kingdom) stated that the London Committee felt that such a system, i.e., giving the nominee an official status as a member, would enlarge the interest of the countries of the world in the Court and also the influence of the Court. He thought that then a smaller number of judges would be better.

Mr. Read (Canada) stated that he had a genuine fear that a smaller number of judges would tend to lower the prestige of the Court. He stated that at the present time if X is considered, X being a judge of the Supreme Court, he is approached and is asked whether he accepts. Now if he is to become a judge of the World Court he can accept. Canada would have a judge on rare occasions. Canada would then have to have an ad hoc judge and would be restricted to its "member" as the ad hoc member.

Ambassador Cordova (Mexico) stated that it seemed that, whatever the system, it is very important that the subcommittee should leave the fifteen members of the Court as they are. He knew of many American states that would like to have a larger Court. He felt that the Court would command more confidence if the number of judges were larger. He was in favor of keeping fifteen as the number of the judges. He stated that it really was not a large number because in the future the Court would have more and more work in chambers and so more judges would be needed. He stated that he agreed with the representative of the United Kingdom that all other candidates should be "members" and in order to meet the objection of Canada "members" could be allowed to have other work.

Professor Golunsky (Soviet Union, Adviser) stated that as to the number of judges the authority of the Court does not depend on the number of judges but on their quality, and that it is always easier to find nine prominent judges known to all the world than fifteen. He stated that he agreed with the representative of the United Kingdom that the number of fifteen judges makes it possible to have seven dissenting opinions and that that was a very serious reason why a smaller Court would be preferable.

M. Star-Busmann (Netherlands) pointed out with respect to the observation made by the Canadian representative that the London Committee had decided that the members of the Court would not be required to hold themselves permanently at the disposal of the Court and that they would be free to engage in any other profession.

Mr. Read (Canada) understood that they would always have to be on call and that it was embarrassing to be a Chief Justice and to be on call.

Ambassador Cordova (Mexico) did not think it was a good idea to have all the candidates become members of the Court and not judges. He stated that the smaller countries would have lesser chance in a smaller Court to have members on it and that he was in favor of having a larger body.

Mr. Fitzmaurice (United Kingdom) stated that his proposal as to status of candidates as members did not arise from desire to reduction in the number of judges. The reason was to give ad hoc members more official status.

Ambassador Cordova (Mexico) stated that if the status is not to influence the number he would be more willing to accept the suggestion of the United Kingdom as to status.

Dr. Badawi (Egypt, Adviser) agreed with the Canadian representative's opinion that if members of the Court are named for nine years their freedom can be hampered and there may be incompatibility between their usual duties and their duties as members of the Court. He was of the opinion that ad hoc judges can make up for any possible disadvantage of this system.

Professor Basdevant (France) stated that he had listened with great interest to this question. The United Kingdom's proposal is undoubtedly of great interest. He doubted that the framework of the Court should be changed and that this would be the effect of the proposal of the United Kingdom. He thought that the composition of the Court proved itself and that public opinion would be upset by any such change. He therefore felt that it would be unwise to accept the proposal of the United Kingdom. However, there were many interesting things in this proposal. For example, with respect to the difficult question of national judges, he stated that the provision for ad hoc judges should be stipulated. He had, however, many doubts about creating a category of judges who would not be judges. As for the number of judges he thought that the proposal of the United Kingdom for a limitation of the number was important. He referred to the statement of the representative of Mexico regarding chambers and the need for a large personnel. He doubted that there would be a great need for personnel due to an increase of cases before the Court. Of course if this happened it would be very fortunate to have a large number but it had not happened yet and if it did there would be time enough to do it. He hoped that there would be a provision for amendments which would permit changing the number of judges if necessary. The important thing was to have good judges. He pointed out that the Supreme Court of the United States has only nine judges and that it has jurisdiction over 48 states. Even if there were fifty judges there would still be many countries which would not have judges. It seemed to him that fifteen judges was too many. The best thing to do would be to reduce the number of judges. There would then be good administration of the Court. A State which is a party to a dispute would be allowed to have its national judge. He stated that he did not know what was meant by the expression "small" State. He did not know whether the list of judges of the Court justified such fear. As regards the proposal of the United Kingdom, so far as the number of judges was concerned the French delegation would be willing to make an amendment and make improvements if necessary. This is the reason why, although he recognized the importance of the proposal of the United Kingdom, he thought that it would be better to maintain the present Statute regarding ad hoc judges.

Ambassador Cordova (Mexico) stated that the remarks of the French representative had been very enlightening and asked if anyone else wanted to speak on the subject. He asked for a vote on the suggestion proposed by the representative of the United Kingdom. There were only three votes for it and six in favor of retention of the present system in the Statute. The decision was in favor of continuing the present system.

M. Jorstad (Norway) stated that he was in favor of fifteen judges and that a World Court should not have only nine judges. He said Judge Hudson was of the same opinion and read the following quotation from the latter's book, The Permanent Court of International Justice 1920-1942, p. 148: ". . . a British proposal that the number of judges be decreased to nine was opposed on the ground that, as 'the Great Powers would always be represented on the Court', other States could not so easily agree on the distribution of fewer places".

Dr. Badawi (Egypt, Adviser) stated that he was of the same opinion. Article 9 relates to this question. It adds an argument in favor of maintaining the present number of judges.

M. Star-Busmann (Netherlands) read the following quotation from an article by Sir Cecil J. B. Hurst entitled "Permanent Court of International Justice", published in The Law Quarterly Review, October 1943, page 325:

> "Probably every lawyer will think of the number of judges who normally sit together in the final Court of appeal in his own country and will regard that as the appropriate number for the Court at The Hague.
>
> Except the Cour de Cassation in Paris where fifteen judges sit in each chamber, no country appears to have a final Court of appeal where as many judges sit together as in the International Court at The Hague.
>
> Professor Gutteridge of Cambridge has given me some information as to the number of judges who sit together in the final Courts of appeal in some of the European countries. The total number of judges belonging to these Courts affords no useful guide, as so often they are divided into chambers. The only relevant circumstance is the number who sit in each chamber. It is this alone which gives any guidance as to the best number for a Court which is to decide issues of great importance finally and without appeal.

In Belgium, not more than eight judges sit together to hear an appeal in the Cour de Cassation. In Germany, the usual number in the Reichsgericht was five.

In Holland, the Supreme Court of Appeal sits in chambers of five, In Norway, appeals are heard by chambers of seven judges. In Switzerland, five judges constitute a chamber to hear an appeal.

The possibility that for some exceptional case, such as the overruling of a previous precedent, all the sections of a final Court of appeal may be convoked to sit together may be disregarded. The 'Cour de Cassation en chambre réunie' comprises forty-seven judges on the rare occasions when it is convoked in France. No one would regard an international Court of nearly fifty judges as a useful institution.

If any change is to be made it probably would not be easy to secure acceptance of a figure as low as five, the normal number in the House of Lords, but if the number of judges in the Supreme Court of the United States could be adopted, it would be equivalent, if allowance is made for the presence of two national judges, to a return to the figure of eleven which was the original number adopted in the Statute of the Court."

Ambassador Cordova (Mexico) asked if the representative of China would care to make any comments.

Dr. Wang (China) stated that originally the Court consisted of eleven judges. Subsequently the number of judges was increased to fifteen. He said the Chinese delegation was in favor of retaining all fifteen judges because the increase was made to meet practical needs and also the sentiment of other nations. He supposed there was a reason why it was increased.

Ambassador Cordova (Mexico) said that the first question was whether the provision for fifteen judges should be retained. If this number is not retained it can then be decided what the number shall be.

Mr. Read (Canada) stated that greater work for the Court is ahead; that it seemed to him that the Court would be used much more than it has been in the past 25 years. The world will look to the Court to settle disputes. He said he had a great deal of sympathy as to the views of the United Kingdom but felt very strongly that there would be a greater amount of work. He thought the smaller countries might not have so much chance and in his opinion this was a most important point.

M. Star-Busmann (Netherlands) asked if the point could not be met by another suggestion, i.e., the appointment by common agreement of two other judges who would take the place of the two youngest members of the Court.

Mr. Fitzmaurice (United Kingdom) stated that the proposal just mentioned had been discussed by the London Committee. If the parties to a dispute are not represented, then the two youngest judges could be replaced by judges agreed upon by the parties. This suggestion would reduce the number of judges and would also give greater representation.

Ambassador Cordova (Mexico) expressed the fear that the new method would complicate the present system of the Court. He asked what would be the effect of the proposal in case the parties did not agree.

M. Star-Busmann (Netherlands) stated that if the Court is to be composed of nine members and there would be two national judges of each party; in addition there would be two judges appointed by common agreement in whom the parties would have complete confidence and of the remaining judges there would be at least two or three in whom both parties would have complete confidence so that it would mean that given nine judges the parties would have complete confidence in at least five judges.

Dr. Badawi (Egypt, Adviser) stated that he could not see more than three, the national judge and the two substitutes.

Ambassador Cordova (Mexico) stated that the Dutch proposal would be too complicated. If the number of judges were to be reduced the Dutch proposal could be then considered. He asked if that would be agreeable to the subcommittee. He then put the question of the number of judges to a vote. There were five votes in favor of having fifteen judges, and four in favor of reducing the number. The decision was to keep the fifteen members of the Court.

Mr. Fitzmaurice (United Kingdom) stated that he had no instructions from his Government but that it was his personal point of view that it would be difficult to have so many judges. He asked if the subcommittee could say that the number of judges sitting should be reduced. He himself had not been convinced of this. States may want to know what judges would sit on any particular case. If the number is too low this objection would be very serious but if the number of judges is fairly high then the objection would not be so.

Ambassador Cordova (Mexico) asked Mr. Fitzmaurice if he would like to make a motion in favor of his proposal.

Mr. Fitzmaurice (United Kingdom) stated that he was not prepared to make a proposal, that he had no instructions from his Government but that he thought that the subcommittee might want to consider the question.

M.. Jorstad (Norway) stated that as a matter of fact all the judges would not sit. Generally with eleven or twelve judges some are on leave and some are sick. He saw no danger of having too many on the bench.

Dr. Badawi (Egypt, Adviser) thought that the Norwegian representative really supported what the United Kingdom representative said. If the Court has fifteen judges there would probably be only nine judges to give decisions and if the United Kingdom delegate cared to make a proposal in this sense Dr. Badawi would support it. There would then arise the question of how these nine judges should be chosen.

Mr. Fitzmaurice (United Kingdom) stated that he was not in a position to make the proposal. He stated that his instructions were not to agree to anything else without referring the matter for further instructions and that he would be quite willing to make that reference.

Mr. Read (Canada) asked whether this matter would not be taken care of in connection with the question of a quorum.

Mr. Fitzmaurice (United Kingdom) said that quorum refers to a minimum number and that his proposition related to maximum number.

Ambassador Cordova (Mexico) said that another point for consideration was who should make the selection of the judges. One suggestion was to have the Assembly and the Council vote separately and if there was no agreement then the Assembly and Council could vote as a body. This is really the present system. Another suggestion was that only the Assembly should decide.

Dr. Badawi (Egypt, Adviser) asked if this would not be a political question for decision by the San Francisco conference.

Ambassador Cordova (Mexico) stated that it might be political but it also had a juridical aspect.

Mr. Fitzmaurice (United Kingdom) said that the subcommittee could decide the juridical question.

Professor Golunsky (Soviet Union, Adviser) stated that he was in favor of elections by the Assembly and Council. The system has been in successful operation 25 years. So far there were only eleven occasions of elections, counting the by-elections, and there was no disagreement in a single case. The present system has greater safeguards. He was strongly in favor of the present system.

Mr. Fitzmaurice (United Kingdom) thought that those were also the views of his Government on the assumption that the Court would be a member of the international organization.

M. Jorstad (Norway) stated that the elections should be by both the Assembly and the Council.

Professor Basdevant (France) expressed the same view.

Dr. Wang (China) also favored election by both parties.

M. Star-Busmann (Netherlands) was in favor of election by the Assembly and the Council.

Ambassador Cordova (Mexico) stated that it appeared that everyone was in agreement that the present system should be continued. He asked what was the next point to be taken up.

Mr. Read (Canada) stated that all had agreed on the four points in question and he did not want to press any objections if the whole picture would be helped by withdrawing his objections.

Ambassador Cordova (Mexico) stated that the subcommittee should draft the text of the articles in regard to which an agreement has been reached.

Mr. Fitzmaurice (United Kingdom) asked if it might not be wise to report back to the main Committee first and get the agreement of the Committee before submitting anything to the drafting committee.

Ambassador Cordova (Mexico) stated that he was in agreement with the representative of the United Kingdom.

Mr. Fitzmaurice (United Kingdom) stated that the main Committee still had to adopt the text, then a drafting committee would have to be set up, and they would be able to embody the suggestions in a text.

Mr. Fitzmaurice (United Kingdom) stated that the subcommittee might decide that point after taking up Article 13 which he thought was the last point requiring consideration. He proposed retirement of one-third of the Court every three years in order to prevent a large number going out at the same time, which might be a very serious break in the continuity of the Court. It is very desirable that there should always be a substantial number who would be familiar with court procedure.

M. Jorstad (Norway) agreed with the proposal by the representative of the United Kingdom.

Ambassador Cordova (Mexico) read Article 13 from the proposals of the United Kingdom, designated Jurist 14, which reads as follows:

> "Article 13. The first paragraph should be amended on the following lines: 'The judges of the Court shall be elected for nine years and may be re-elected; provided, however, that if the judges elected at the first election of the Court, three (to be chosen by lot) shall retire at the end of three years, and, unless re-elected, shall be replaced; and that at the end of six years three more judges (to be chosen by lot from those who have not previously retired and been re-elected) shall similarly retire and, unless re-elected, shall be replaced'."

Mr. Fitzmaurice (United Kingdom) stated that there is a misprint on the fourth line of Article 13 as contained in Jurist 14. The third word should read "of" instead of "if".

Dr. Badawi (Egypt, Adviser) asked a question regarding the number of years the judges would remain on the Court.

Mr. Fitzmaurice (United Kingdom) stated that at first there would be elected fifteen judges of which five would retire at the end of three years. Of course they might be re-elected. If they should be re-elected they would be judges for a period of twelve years. At the end of six years five other judges would retire. The remainder would retire at the end of nine years. He regretted that the above-quoted Article 13 was not complete. It would be necessary to add a general provision which would declare how each one-third would retire.

Dr. Wang (China) stated that he was in agreement with the representative of the United Kingdom.

Ambassador Cordova (Mexico) asked if there were any objections. There were no objections. Ambassador Cordova announced that the decision of the subcommittee is to have the rotation system adopted with the understanding that Mr. Fitzmaurice would prepare a complete draft of Article 13.

Mr. Fitzmaurice (United Kingdom) stated that he would prepare such a draft.

Ambassador Cordova (Mexico) stated that the subcommittee had received a recommendation from the subcommittee on Articles 26, 27, 28, 29, and 30. The recommendation, dated April 11, 1945, reads as follows:

> "Subcommittee 4 (the representatives of Chile, China, Iraq, and the United Kingdom) appointed to consider Articles 26, 27, 28, 29, and 30 desire to suggest to subcommittee 2 that the latter should in the course of its deliberations decide the number of judges of which chambers of the Court created for dealing with particular cases or with particular categories of cases or for summary procedure should be composed.
>
> This committee will submit draft articles including provisions for the number of judges without specifying any number as follows:
>
> Article 26. The Court may from time to time from one or more chambers, composed of _____ judges, for dealing with particular cases or with particular categories of cases, such as labor cases and cases relating to transit and communications. If the parties so request, such cases will be heard and determined by those chambers.
>
> Article 27 (formerly 29). With a view to the speedy dispatch of business, the Court shall form annually a chamber, composed of _____ judges, which, at the request of the contesting parties, may hear

and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit."

Ambassador Cordova (Mexico) pointed out that the recommendation was made because the number of judges was a matter to be decided by this subcommittee and was not known to the other subcommittees.

Professor Golunsky (Soviet Union, Adviser) suggested five judges.

Dr. Hoo (China, Adviser) stated that there were two kinds of chambers, one for special cases, Article 26, the other kind for summary proceedings, Article 27 (formerly 29).

Mr. Read (Canada) asked whether the provision in question should not read "not more than five".

Professor Basdevant (France) suggested that the Court be given power to constitute chambers and to specify the number of judges. If there were no provision as to the number of judges for chambers it would be understood that the matter was for decision by the Court.

Ambassador Cordova (Mexico) stated that the subcommittee could of course say that the Court may from time to time create such chambers.

Mr. Read (Canada) stated that he thought if the number of judges were more than five it would be cumbersome. He thought that in both summary and special chambers the matter should be left to the discretion of the Court.

Ambassador Cordova (Mexico) put the question to a vote. The vote was in favor of five judges for summary chambers and for leaving it to the discretion of the Court so far as the special chambers were concerned. Ambassador Cordova then observed that Article 26 should read as quoted above except that the words "composed of _____ judges" should be omitted.

Dr. Badawi (Egypt, Adviser) asked if there should not be added to Article 26 the provision that the number of judges as to the special chambers referred to in that article is to be determined by the Court.

Professor Golunsky (Soviet Union, Adviser) stated that this was not necessary.

Mr. Fitzmaurice (United Kingdom) stated that it was not necessary because if nothing is said as to who is to decide, it is left to the Court.

Dr. Badawi (Egypt, Adviser) stated that it would be better to make it clear.

Professor Golunsky (Soviet Union, Adviser) stated that it was clear.

Ambassador Cordova (Mexico) stated also that it was clear.

Mr. Star-Busmann (Netherlands) stated that under this article the Court could create a chamber consisting of only one judge.

Professor Golunsky (Soviet Union, Adviser) stated that that would be so if the parties agree.

Professor Basdevant (France) stated that it was not necessary to put it in.

Professor Golunsky (Soviet Union, Adviser) stated that one judge and two assessors would be a chamber.

Dr. Badawi (Egypt, Adviser) asked whether the proposed addition would not clarify matters.

Professor Golunsky (Soviet Union, Adviser) proposed that the subcommittee appoint its Chairman, Ambassador Cordova (Mexico), as its Rapporteur.

Ambassador Cordova accepted the appointment.

The meeting adjourned at 6:10 p.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 24
G/18
April 12, 1945

REPORT OF SUBCOMMITTEE ON ARTICLES 3 TO 13

The subcommittee was constituted by the delegates from Canada, China, Egypt, France, Mexico, Netherlands, Norway, Union of Soviet Socialist Republics, and United Kingdom, and met at 3 on April 11, 1945.

Through the kindness of the members of this subcommittee who conferred on me the honor of presiding over its deliberations, I have the privilege to submit to you a preliminary report of the work done in yesterday's session.

In such a short time it has proved impossible to have before me the minutes of the session. Therefore, I propose to limit this report to the most important points. The subcommittee did not examine article by article; nor did it consider the actual drafting of the changes it proposes to recommend in certain articles of the existing Statute. Our procedure was determined by the desire to simplify the work and by the idea--which proved the controlling one--that as soon as we could reach a decision on a small number of important problems the drafting of the new articles would be a simple task.

Once these decisions were reached, we decided that if they could be voted by a full session of the Committee the drafting of the new articles would be accomplished with a firmer basis. This is the object of the present report wherein I intend to set forth the principal points on which a vote was taken in yesterday's session and a brief résumé of the reasons on which the majority of the subcommittee based their points of view.

In the enumeration of these points I will follow the order in which they were discussed and decided by the subcommittee. Some of the problems are so closely related to one another that the discussions would embrace several points. In the interest of clarity, I will exclusively deal with only one point under each heading.

1. The first problem was posed before the subcommittee in the following terms:

> The candidates to the office of Member of the Court should be nominated directly by the governments or in accordance with the system provided in the present Statute of the Court, namely, by the "national groups" to which Articles 4 and 5 refer.

This first question was decided by the subcommittee in favor of the first alternative, namely, that the candidates shall be nominated directly by the government.

In dealing with this problem the subcommittee took into consideration--as it did with regard to all of the other points it examined--not only the opinions advanced by its members but also those that have been expressed in the previous sessions of the full Committee.

So far as I can remember the majority of the subcommittee based their opinion on the following reasons: (a) the system of "national groups" should be abolished because it is too complicated; (b) it may have had a raison d'être in the past but has ceased to be either indispensable or advisable; (c) the simpler method of direct nomination by the governments will reduce the possibility of making "political" nominations; (d) Articles 4 and 5 of the Statute incorporate the method of nomination of candidates established in the Convention of The Hague of 1907 which should not be preserved in the revised Statute.

2. The second question which came up for consideration by the subcommittee may be stated as follows:

> Should the governments designate only one candidate of their own nationality, or should they simultaneously nominate one or several additional candidates of foreign nationality.

The subcommittee decided to recommend that the governments designate one only candidate and that such nominee be a national of the State making the nomination.

The reasons advanced in support of the majority opinion may perhaps be summarized in the following manner: (a) the proposed system of one national candidate for each State will minimize the political intervention of the Chanceries which precede the designations made according to the present method; (b) moreover, it will eliminate the possibility of having the candidates come before the elective organs of the world Organization on unequal conditions.

With regard to the latter argument, the majority of the subcommittee feels that it is important that each and every one of the candidates have the same rating when they come up for election. The majority were of the opinion, also, that the present electoral system should be simplified whenever possible.

3. The third question decided by the Subcommittee was that the government nominees are not to be considered auxiliary members of the Court but merely the persons among whom the members are to be chosen.

The point was raised by the suggestion of the delegate of the United Kingdom with which the Committee is familiar. This proposal would place all of the government nominees at the disposal of the Court for a given period of time, presumably for that of nine years.

With regard to this problem the Canadian delegate voiced the objection that it would hardly seem justified--and would perhaps lead to difficulties of a practical order--to hold the nominees in readiness to serve as members for the long period of time during which they would be the object of the questionable distinction of being auxiliary members of the Court. Many of the nominees would be disinclined, according to the Canadian delegate's opinion, to commit themselves to be ready to answer the call of the Court in view of the fact that they would fear that circumstances arising in the future would make it impossible for them to comply with the Court's request that they render their services.

On this point the members constituting the majority felt that it would be best not to adopt an innovation the practical merits of which were by no means clear in their minds.

4. Having thus decided to recommend that the governments directly nominate one candidate and only one; that the nominees be nationals of the appointing governments and that the nominations will not invest them with the character of auxiliary members but should be considered exclusively as a prerequisite of the election of the members of the Court, the subcommittee arrived at the conclusion that it is advisable to retain the provision of the Statute that establishes that the members of the Court be fifteen in number.

The bases for this majority opinion are the following: (a) that in a smaller judicial body it would be difficult--if not altogether impossible--to carry out the desideratum set forth in Article 9 of the Statute, namely, that the main forms of civilization and the principal legal systems of the world be represented in the Court; (b) that it hardly seems advisable to lessen the opportunity of the smaller nations to find themselves represented in the World Court; (c) that a considerable increase in the activity of the Court is envisaged for the post-war period; and, lastly, that the present number of fifteen was reached after experience had shown it to be preferable to the original number of eleven members.

5. The next conclusion reached by the subcommittee was to unanimously endorse the proposal of the delegate from the United Kingdom to adopt a system of rotation whereby only a third of the members of the Court will be replaced at any given time.

In this regard, the subcommittee is of the opinion that the provision of Article 13 that the members of the Court be elected for a period of nine years should be maintained but that, in order to avoid serious interruptions of the continuity of the Court, special rules be adopted for the first election.

These special rules for the first election, which have already been circulated by the delegate from the United Kingdom, read as follows:

> ". . . of the judges elected at the first election of the Court, three (to be chosen by lot) shall retire at the end of three years, and, unless re-elected, shall be replaced; and that at the end of six years three more judges (to be chosen by lot from those who have not previously retired and been re-elected) shall similarly retire and, unless re-elected, shall be replaced."

Were this system to be adopted, five of the members designated in the first election will serve for three years; five for six years, and five for nine years. In connection with this problem it may be useful to state that it is my understanding that the subcommittee favors the retention of the present provision of the Statute that makes it possible for members to be re-elected.

The result of the system of rotation--the adoption of which is strongly recommended by the subcommittee--would be, as has already been said, that at no time will it be possible to replace more than one-third of the members of the Court.

6. The subcommittee also voted on the question of the method in which the members are to be elected. With Egypt and Mexico as the only dissenters, the subcommittee decided to recommend that the system established in the present Statute, whereby the members of the Court are elected by the Assembly and the Council, be retained. In favor of this recommendation it was advanced that the method had proven its merits in the past and that so serious a matter as the election of the members of the World Court should not be entrusted to any one body. The discussion was motivated by the proposal that the Assembly be designated the sole electoral organ.

7. Article 6 of the existing Statute was also discussed at length, the opinion having been voiced that perhaps it would be advisable to alter this provision in order that the recommendation to the governments that they consult their Highest Court, Legal Faculties, National Academies and national sections of International Academies on their nomination of candidates be strengthened by making it an obligation.

Although the subcommittee was agreed that the end pursued by this line of thought is commendable, after having examined the practical difficulties involved, it unanimously resolved in favor of the retention of Article 6 with no other changes than the one required by the proposed elimination of the "national groups" from the electoral system. In connection with this point, the subcommittee is of the opinion that it would be dangerous to establish a requirement, such as the obligatory consultation with a certain number of domestic bodies, non-compliance with which would afford grounds for attacking the validity of an election.

8. The subcommittee on Articles 26, 27, 29, and 30 constituted by the representatives of Chile, China, Iraq, and the United Kingdom, asked this subcommittee to decide the number of members which will constitute the chambers of the Court created for dealing with particular cases, with particular categories of cases, or for summary procedure.

The subcommittee on Articles 26, 27, 29, and 30 kindly submitted to us a draft of Articles 26 and 27, the latter article corresponding to Article 29 of the present Statute.

This subcommittee is of the opinion that the chambers for particular cases or for particular categories of cases be composed of the number of members which the Court may decide with the approval of the parties. In connection with the chamber for summary procedure, this subcommittee suggests that it be composed by five members because, having retained the full number of fifteen members, it believes that Article 29 of the present Statute should not be amended on this point.

This subcommittee adjourned at 6 o'clock. The statements of its component members were brief. It believes that most of the work entrusted to it has already been accomplished. If the full Committee deems it advisable to vote on the points which have here been summarized, this subcommittee believes that it will be in a position to submit a draft of the revised articles within a very short period of time.

Respectfully,

(Signed) ROBERTO CORDOVA

Chairman

Washington, D. C.,

April 12, 1945

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 20
G/15
April 11, 1945

REPORT OF SUBCOMMITTEE ON ARTICLES 22 AND 28

This Subcommittee, which was entrusted by the Committee of Jurists to draft the text of Articles 22 and 28, met in Conference Room B of the Interdepartmental Auditorium, Washington, D. C., April 11, 1945, at 4 p.m.

The following members of the subcommittee were present:

Sr. Dihigo (Cuba)
Sr. Castro (El Salvador)
Dr. Gavrilovic (Yugoslavia)

After discussing the text of Article 22 as proposed by the delegation of the United States of America, and the amendments proposed by the delegates of El Salvador and Cuba, and the text proposed by the delegation of the United States of America of Article 28, in the light of decisions which were adopted on the points of principle involved by the Committee of Jurists this morning, they have decided to propose to the Committee of Jurists the following texts:

a. Article 22. The seat of the Court shall be established at The Hague. This, however, will not prevent the Court from sitting and rendering valid decisions elsewhere whenever the Court considers it necessary or desirable.

a) Article 22. Le siège de la Cour est fixé à La Haye. Cependant, ceci n'empêchera pas la Cour de siéger ailleurs et d'y rendre des arrêts valides, lorsqu'elle le jugera nécessaire ou désirable.

b. Article 28. The Chambers provided for in Articles 26 and 29 may sit and render valid decisions elsewhere than at The Hague whenever they consider it necessary or desirable.

b) Article 28. Les Chambres prévues aux Articles 26 et 29 peuvent siéger ailleurs qu'à La Haye et y rendre des arrêts valides lorsqu'elles le jugerons nécessaire ou désirable.

The above decisions were adopted by the subcommittee unanimously.

The subcommittee has requested the representative of El Salvador to submit this report to the Committee of Jurists.

(Signed) **ERNESTO DIHIGO**
Cuba

HECTOR DAVID CASTRO
El Salvador

DR. S. GABRILOVIC
Yugoslavia

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 23
G/17
April 11, 1945

REPORT OF SUBCOMMITTEE ON ARTICLES 26, 27, 29, AND 30

The subcommittee met on April 11 at 3 p.m. The following members were present:

Dr. Abbass (Iraq)
Mr. Bathurst (United Kingdom)
Dr. Hoo (China)
Ambassador Mora (Chile), with Minister Gajardo as alternate

The subcommittee decided that it should appoint no chairman. The representative of the United Kingdom was designated Rapporteur.

2. In the course of its discussion the subcommittee transmitted to the subcommittee on Articles 4-14 the following communication:

> "The subcommittee, composed of the representatives of Chile, China, Iraq, and the United Kingdom, appointed to consider Articles 26, 27, 29, and 30 desire to suggest to the subcommittee on Articles 4-14 that the latter should, in the course of its deliberations, decide the number of judges of which chambers of the Court (created for dealing with particular cases or with particular categories of cases or for summary procedure) should be composed.
>
> "This subcommittee will submit draft articles including provisions for the number of judges without specifying any number."

3. The subcommittee unanimously recommended that Articles 26 to 30 should be revised as follows:

> Article 26. The Court may from time to time form one or more chambers, composed of _____ judges, for dealing with particular cases or with particular categories of cases, such as labor cases and cases relating to transit and communications. If the parties so request, such cases will be heard and determined by those chambers.

Article 27 (formerly Article 29). With a view to the speedy dispatch of business, the Court shall form annually a chamber, composed of _____ judges, which, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 28 (formerly Articles 27 and 28). A judgment given by any of the chambers provided for in Articles 26 and 27 shall be a judgment rendered by the Court.

The chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

Article 29 (formerly Article 30 and Article 26, second sentence). The Court shall frame rules regulating the fulfilment of its functions.

The Court's rules may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

* * *

Article 26. La Cour peut, de temps à autre, constituer une ou plusieurs chambres, composees de _____ juges, pour connaitre d'affaires determinées d'affaires, tels que les litiges de travail et les questions concernant le transit et les communications. A la demande des parties, les affaires seront soumises à ces Chambres et jugées par elles.

Article 27 (ancien Article 29). En vue de la prompte expédition des affaires, la Cour compose annuellement une chambre composée de _____ juges qui, à la demande des parties en cause, peut instruire les affaires et statuer en procedure sommaire. Deux juges seront, en outre, choisis pour remplacer ceux qui se trouveraient dans l'impossibilité de sieger.

Article 28 (anciens Articles 27 et 28). Tout jugement rendu par l'une des Chambres prévues aux Articles 26 et 27 sera un jugement rendu par la Cour.

Les Chambres prévues aux termes des Articles 26 et 27 peuvent sur le consentement des parties en cause, siéger ailleurs qu'à La Haye.

Article 29 (ancien Article 30 et Article 26, deuxième paragraphe). La Cour détermine part un règlement la mode suivant lequel elle exerce ses attributions.

La Cour prévoit par un règlement que les assesseurs siégeront aux séances de la Cour ou de ses Chambres, avec voix consultative.

* * * *

4. The words "such as labor cases and cases relating to transit and communications" were inserted in Article 26 to meet the point raised by His Excellency the Ambassador from Chile at the meeting of the Committee in the morning of April 11. The subcommittee also considered that these words should be inserted to indicate that the subject matter of Articles 26 and 27 of the original Statute was covered by this new general provision.

5. The new Article 27 (formerly Article 29) has a grammatical correction in the final sentence where it is provided that "two judges shall be selected for the purpose of replacing judges who find it impossible to sit". In the original text the words were replacing "a judge".

6. Article 28 represents a consolidation of provisions, subject to whatever recommendations the subcommittee on Articles 22 and 32 may make as to the place at which the Court and its chambers shall sit.

7. With regard to Article 29 (formerly Article 30) the subcommittee decided to recommend that the words "the fulfilment of its functions" are a more accurate translation of the French text, namely, "le mode suivant lequel elle exerce ses attributions." The subcommittee also decided to recommend that the general rule-making power rendered unnecessary a particular reference to the making of rules for summary procedure.

8. The subcommittee decided to recommend that the provision relating to assessors could more appropriately appear in Article 29, and it is so inserted. The subcommittee also decided that it is desirable for the Court's rules to provide

for assessors to sit (without the right to vote) not only with chambers formed for particular cases or for summary procedure, but also with the full Court. The article is accordingly amended in that respect.

9. According to information provided by the Secretariat, there was not referred to this subcommittee the question whether provision should be made for the International Labor Office or any other international organ or institution to be at liberty to furnish the Court with relevant information, as that is a matter covered by the amendment to Article 34 proposed by the United States Delegation. Accordingly, the subcommittee did not consider this matter and makes no recommendation on it.

By direction of the Subcommittee

M. E. Bathurst (Alternate Delegate
from the United Kingdom),
Rapporteur

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 43
G/33
April 14, 1945

THE REPORT OF THE SUBCOMMITTEE ON ARTICLE 36 (COMPULSORY JURISDICTION)

This subcommittee which was entrusted by the Committee of Jurists to draft the text of Article 36 (on compulsory basis) met in conference room C of the Interdepartmental Auditorium, Washington, D. C., April 13, 1945, at 5:30 p.m. The following members of the subcommittee were present:

(Brazil)	Minister A. Camillo de Oliveira
(China)	Dr. Wang Chung-hui
(Cuba)	Sr. Ernesto Dihigo
(Mexico)	Ambassador Roberto Cordova
(Venezuela)	Dr. Luis E. Gómez-Ruiz

Dr. Wang Chung-hui was elected Chairman.

The subcommittee, having given careful consideration to the various proposals that had been presented as well as to the views previously expressed by the different delegates before the Committee of Jurists, unanimously agreed upon the following:

"The Court, being the principal judicial organ of the United Nations, should possess definite jurisdiction, if not in all cases, at least in those cases which are peculiarly susceptible of judicial settlement, namely, legal disputes.

"It may be recalled that as far back as 1920 compulsory jurisdiction was proposed by the Committee of Jurists which drafted the existing statute. The Governments were not prepared at that time to accept the proposal and the result was the adoption of what is known as the optional clause.

"The exercise of compulsory jurisdiction by the Court will promote the rule of law among nations. Public opinion throughout the world is strongly in favor of conferring on the Court compulsory jurisdiction.

"The optional clause has been accepted by 45 out of 51 nations. By now the change from an optional to a non-optional basis would be a logical and desirable step in furthering the cause of international peace and justice.

Article 36 should therefore be revised to read as follows:

"Article 36.

"1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations and in treaties and conventions in force.

"2. The members of the United Nations and states parties to the Statute recognize as among themselves the jurisdiction of the Court as compulsory *ipso facto* and without special agreement in all or any of the classes of legal disputes concerning:

"(a) the interpretation of a treaty;
"(b) any question of international law;
"(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
"(d) the nature or extent of the reparation to be made for the breach of an international obligation.

"3. In the event of a dispute as to whether the Court has jurisdiction, the matter is settled by decision of the Court."

(Signed) WANG CHUNG-HUI

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 41
G/31
April 14, 1945

REPORT OF SUBCOMMITTEE DEALING WITH OPTIONAL DRAFT OF ARTICLE 36 AND OTHER ARTICLES OF CHAPTER II

Messrs. Fitzmaurice (United Kingdom), Spiropoulos (Greece), * Golunsky and Krylov (Soviet Union), and Fahy (United States) met in Committee Room B, Interdepartmental Auditorium, at 5:45 p.m. April 13, 1945 and agreed upon the appended report.

The subcommittee recommends the adoption of the "optional clause" in the same terms as it appears in the American draft (Doc. US Jur. 1) amended by inserting "justiciable" between the words "all" and "cases" in the first line, so that Article 36 would read as follows:

> Article 36. The jurisdiction of the Court comprises all justiciable cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations and in treaties and conventions in force.
>
> The Members of the United Nations and the States parties to the Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:
>
> (a) the interpretation of a treaty;
>
> (b) any question of international law;
>
> (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
>
> (d) the nature or extent of the reparation to be made for the breach of an international obligation.
>
> The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

*[Corrigendum see p.291]

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

The subcommittee calls attention to the fact that many nations have heretofore accepted compulsory jurisdiction under the "optional clause". The subcommittee believes that provision should be made at the San Francisco Conference for a special agreement for continuing these acceptances in force for the purpose of this Statute.

The subcommittee notes that Article 37 was referred to the Drafting Committee subsequent to the appointment of this subcommittee and therefore considers that the Drafting Committee has this article under consideration.

Apart from the above points, the subcommittee decided to recommend no other changes in Chapter II.

* * *

COMPTE-RENDU DU SOUS-COMITE CHARGE DE L'AVANT-PROJET DE L'ARTICLE 36 ET DES AUTRES ARTICLES DU CHAPITRE II

MM. Fitzmaurice (Royaume Unis), Spiropoulos (Grèce), Golunsky et Krylov (Union Soviétique) et Fahy (États Unis) assemblés dans la Salle de Comité B de l'Auditorium Interdépartemental, à 17 heures 45, le 13 Avril 1945, ont convenu ce qui suit:

Le sous-comité recommande l'adoption de la "clause facultative" sous la forme indiquée dans le projet Américain (Document US Jur. 1) modifiée par l'insertion à la première ligne des mots "toutes les affaires justiciables" au lieu des mots "toutes affaires", de sorte que l'article 36 soit concu comme il suit:

> Article 36. La compétence de la Cour s'étend à toutes les affaires justiciables que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur.
>
> Les membres des Nations Unies et Etats parties au Statut pourront, à n'imparte quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout

autre membre ou Etat acceptant la même obligation, la compétence de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:

a) l'interprétation d'un traité;

b) tout point de droit international;

c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international;

d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

Le sous-comité attire l'attention sur le fait que plusieurs nations ont jusqu'ici accepté la clause de "compétence obligatoire Le sous-comité estime que la conférence de San Francisco devrait prévoir un accord spécial pour maintenir ces acceptations en vigueur, aux fins du présent Statut.

Le sous-comité remarque que l'article 37 a été référé au Comité de Rédaction désigné après l'établissement du présent sous-comité, et, considère, par conséquent que le Comité de Rédaction a mis ledit article à l'étude.

Hormis ce qui précède, le sous-comité décide de ne recommander aucune autre modification au Chapitre II.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 68 (41)
G/55
April 19, 1945

CORRIGENDUM OF REPORT OF SUBCOMMITTEE DEALING WITH OPTIONAL DRAFT OF ARTICLE 36 AND OTHER ARTICLES OF CHAPTER II

In the second line of the first paragraph of page 1, substitute "Novikov" for "Golunsky and Krylov".

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D.C.

RESTRICTED
Jurist 56
G/44
April 14, 1945

MINUTES OF DRAFTING COMMITTEE MEETING

Interdepartmental Auditorium, Committee Room B
Saturday, April 14, 3:15 p.m.

There were present:

Canada: Mr. John E. Read, Chairman
Belgium: M. Joseph Nisot (Alternate)
Brazil: Minister A. Camillo de Oliveira (Alternate)
China: Dr. Wang Chung-hui
    Dr. Victor C.T. Hoo (Adviser)
Norway: M. Lars J. Jorstad
Peru: Dr. Arturo Garcia
    Dr. Luis Alvarado (Adviser)
Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics:
    Professor S.A. Golunsky (Adviser)
    Professor S.B. Krylov (Adviser)
United Kingdom: Mr. G.G. Fitzmaurice
United States of America: Mr. Charles Fahy (Adviser)
    Mr. Philip C. Jessup (Adviser)

Professor Jules Basdevant, France, Rapporteur of the Committee, accompanied by Dr. Raoul Aglion (Adviser) and Professor Chaumont (Adviser)
Judge Manley O. Hudson, Unofficial Representative, Permanent Court of International Justice

Also:

Sr. José J. Gori, Colombia (Alternate)
M. E. Star-Busmann, Netherlands
Dr. Urdaneta A., Colombia

Mr. Read (Canada), Chairman, suggested beginning with Article 66 of the Proposed Revisionsof the Statute. Mr. Jessup (United States) proposed that the first line in paragraph 3 be changed to read: "Should any member or State referred to in Paragraph (1) have failed to receive ..." This was accepted.

It was suggested by Mr. Jessup that the word "admitted" in line 3 of the paragraph numbered 2 should be changed to "entitled". Mr. Hudson suggested that the more suitable word would be "permitted". This was accepted by the committee, so that this paragraph will read as follows:

> "2. Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other . . ."

Article 67 was accepted without change. Article 68 was also accepted without change.

Mr. Fitzmaurice (United Kingdom) noted that Article 69 would need to be redrafted in order to accord with the amendment provisions to be contained in the Dumbarton Oaks Proposals as accepted by the San Francisco Conference. Mr. Hudson offered to present a redraft of Article 69 with three slight changes. It was agreed to defer further discussion of the article until a later date.

* Turning to Article 1, three revised drafts were placed before the committee respectively by M. Jorstad (Norway), Mr. Fitzmaurice (United Kingdom), and Mr. Jessup (United States).

The Chairman observed that there had been discussion in the Committee of Jurists as to whether the second sentence appearing in the Proposed Revisions of the Statute should be maintained or dropped, and also whether the court would be the existing Permanent Court of International Justice or a new one. It was noted that there were three possibilities of action before the committee:

(1) The second sentence of Article 1 might be resubmitted to the Committee of Jurists;

(2) Article 1 might be omitted entirely;

(3) Article 1 might be left blank until it has been decided at San Francisco whether the existing Permanent Court of International Justice should be retained or a new court established.

*[Corrigendum see p.296]

It was agreed that both sentences of Article 1 should appear in blank with the entire matter to be referred to the San Francisco Conference.

Taking up Article 31, a draft to replace paragraphs 2 and 3 was submitted by Mr. Fitzmaurice (United Kingdom), as follows:

> "If there is any party to a dispute before the Court a judge of whose nationality is not included upon the Bench it may select a person to sit as judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5."

Mr. Jessup noted that elsewhere in the Statute the word "case" had been used in place of "dispute", and said that he favored using that word here.

The Rapporteur and Mr. Fitzmaurice agreed with this suggestion.

Mr. Fitzmaurice suggested that in the third line the words "that party" be substituted for "it".

Question having arisen whether the phrase "party' to a case before the Court" would cover advisory opinions, Mr. Hudson called attention to the fact that advisory opinions are dealt with in Article 68 and in the Rules of the Court and should not be covered here.

M. Star-Busmann (Netherlands) observed that Mr. Fitzmaurice's draft employed the expression "may select a person to sit as judge" whereas in paragraph 2 of the Proposed Revision of the Statute the words "may choose a person" had been employed, and in paragraph 3 of the Proposed Revision the phrase "may proceed to select" had been used. Discussion brought out the point that where the term "select" is used this would refer to taking a person from a prepared list, while the word "choose" implied taking any person, regardless of a list. M. Nisot (Belgium) felt that it would be dangerous to try to change a text which had given satisfaction for the past 25 years. Professor Golunsky (Soviet Union) said he was in favor of Mr. Fitzmaurice's draft with the changes already proposed. The Rapporteur wondered if Mr. Fitzmaurice's draft might not be improved by taking inspiration from Article 83 of the Rules of the Court with respect to advisory opinions, using the same terminology which distinguishes between advisory opinions with respect to disputes and to other questions. He suggested the following draft in French which he thought was nearly the same as Mr. Fitzmaurice's but more direct:

> "Toute partie à un différend qui ne compte pas sur le siège un juge de sa nationalité a le droit de designer une personne de son choix pour siéger en qualité de juge; en la choisissant de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5."

M. Nisot (Belgium) expressed continued concern over the matter of advisory opinions. The Rapporteur said he was aiming at parties to a dispute and noted that Article 83 distinguishes between advisory opinions on "disputes" and on "questions". The Rapporteur thought Mr. Fitzmaurice's text might be maintained and that his was the corresponding one in French. The Chairman agreed with M. Nisot that the committee had come to a vitally important question. Mr. Hudson and Mr. Fitzmaurice agreed. Mr. Hudson said that he was dubious about shortening the existing text and favored waiting further upon the matter. M. Jorstad (Norway) said that if the committee intended to cover advisory opinions, there should be specific reference to them in the phraseology employed. No decision was reached with respect to Article 31.

The Committee adjourned at 4 p.m., to meet Sunday at 10:30 a.m.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 70(56)
G/57
April 19, 1945

CORRIGENDUM OF MINUTES OF DRAFTING COMMITTEE MEETING

Insert after fifth paragraph on page 2, the text of the following drafts:

Article 1

The Permanent Court of International Justice, established in 1920 and reconstituted in 1929 and 1945, shall be the principal judicial organ of The United Nations.

(Mr. Jorstad)

* * *

Article 1

The Permanent Court of International Justice constituting the principal judicial organ of The United Nations shall function in accordance with the provisions of this Statute.

(Mr. Fitzmaurice)

* * *

Article 1

The Permanent Court of International Justice, reconstituted and adopted to the purposes of The United Nations by this Statute, shall be the principal . . .

(P. C. Jessup)

Insert at the end of the next to the last sentence of the first full paragraph on page 4 the following words: ", or a provision to this effect could be added to Article 68."

DRAFT PROPOSALS SUBMITTED BY DELEGATIONS

PROJETS ET AMENDEMENTS PRÉSENTÉS PAR LES DÉLÉGATIONS

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 10
DF/3
April 10, 1945

METHOD OF NOMINATION OF CANDIDATES FOR JUDGES SUGGESTED BY THE REPRESENTATIVE OF CHINA

The representative of China thinks that the method of nominating candidates for judges provided in the original Statute is rather too complicated, and favors the direct nomination of one candidate by the Government of each of the States having the right to participate in the election of the judges.

* * * *

MÉTHODE DE PRÉSENTATION DES CANDIDATS AUX FONCTIONS DE MAGISTRATS PROPOSÉE PAR LE REPRÉSENTANT DE LA CHINE

Le Représentant de la Chine trouve que la méthode de présentation des candidats aux fonctions de magistrats prévue au Statut original est plutôt compliquée et il se prononce en faveur de la présentation directe d'un candidat par le Gouvernement de chacun des États ayant le droit de participer à l'élection des magistrats.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 35
DP/11
April 13, 1945

REVISION OF ARTICLE 36, PARAGRAPHS 2 AND 3 PROPOSED BY THE DELEGATION OF CHINA

(Paragraphs 1 and 4 remain unchanged)

2. The Members of The United Nations and the States parties to the Statute recognize as compulsory ipso facto and without special agreement the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) the interpretation of a treaty;

(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

* * *

REVISION DE L'ARTICLE 36, PARAGRAPHES 2 ET 3, PROPOSEE PAR LA DELEGATION CHINOISE

(Les paragraphes 1 et 4 restent sans changement)

2. Les membres des Nations Unies et les Etats parties au Statut reconnaissent comme obligatoire, de plein droit et sans convention spéciale, la compétence de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:

(a) l'interprétation d'un traité;

(b) tout point de droit international;

(c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;

(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 8
DP/2
April 10, 1945

PROPOSED REVISION OF ARTICLE 2 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, SUBMITTED BY THE REPRESENTATIVE OF EGYPT

Article 2. The Permanent Court of International Justice shall be composed of a body of independent judges elected regardless of their nationality on the basis of their technical qualifications, personal reputation, and impartiality, who have occupied in their respective countries the highest judicial offices or are jurisconsults of recognized competence in international law.

* * *

RÉVISION DE L'ARTICLE 2 DU STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE PROPOSÉE PAR LE REPRESENTANT DE L'EGYPTE

Article 2. La Cour Permanente de Justice Internationale est un corps de magistrats indépendants, élus sans égard à leur nationalité sur la base du leur qualités techniques, réputation personnelle, et impartialité. et qui ont occupée dans leurs pays respectifs des plus hautes fonctions judiciares ou qui sont les jurisconsultes de compétence notoiré en matière de droit international.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 31
G/23
April 13, 1945

REVISION OF ARTICLE 36, PROPOSED
BY THE EGYPTIAN DELEGATION

ARTICLE 36

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations and in treaties and conventions in force.

The Members of the United Nations and the States parties to the Statute declare that they recognize as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all or any of the classes of legal disputes concerning

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation.

The Members of the United Nations and the States parties to the Statute may however, either at the time of signature or of adherence to the Statute, make reservations as to compulsory jurisdiction. Reservations made by a State will benefit any other party to a dispute against which that State may have prevailed itself of the jurisdiction of the Court.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

REVISION DE L'ARTICLE 36, PROPOSEE PAR LA DELEGATION EGYPTIENNE

ARTICLE 36

La compétence de la Cour s'étend à toutes affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur.

Les membres des Nations Unies et Etats parties au Statut déclarent reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, la compétence de la Cour sur toutes ou quelques-uns des catégories de différends d'ordre juridique ayant pour objet:

(a) l'interprétation d'un traité;
(b) tout point de droit international;
(c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;
(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

Les membres des Nations Unies et les Etats parties au Statut peuvent néanmoins, soit lors de la signature ou de l'adhésion au Statut, formuler des réserves quant à la compétence obligatoire. Les réserves faites par un Etat profiteront à toute autre partie à un différend contre laquelle cet Etat aurait pu se prévaloir de la compétence de la Cour.

En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 33
DP/10
April 12, 1945

PROPOSED REVISION OF ARTICLE 36, SUBMITTED BY THE REPRESENTATIVE OF HONDURAS

ARTICLE 36

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations and in treaties and conventions in force.

The Members of the United Nations and the States parties to the Statute declare that they recognize as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

At the request of an interested party, the Court shall render its decisions with the assistance of the Security Council, of the General Assembly, or of any other qualified organ.

Jurist 33

REVISION DE L'ARTICLE 36
PROPOSEE PAR LE REPRESENTANT
DES HONDURAS

ARTICLE 36

La compétence de la Cour s'étend à toutes affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur.

Les membres des Nations Unies et Etats parties au Statut déclarent reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, la compétence de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:

(a) l'interprétation d'un traité;
(b) tout point de droit international;
(c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;
(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

A la demande de l'une des parties en cause, la Cour décidera avec l'assistance du Conseil de Sécurité, de l'Assemblée Générale, ou de tout autre organe qualifié.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D.C.

RESTRICTED
Jurist 18
DP/6
April 11, 1945

MEMORANDUM BY THE LIBERIAN GOVERNMENT ON THE INTERNATIONAL COURT OF JUSTICE

(With French Translation)

In connection with Chapter VII, the following suggestions are offered by the Liberian Government with reference to the International Court of Justice:

(a) That the Court envisaged by this report should be an independent organization unaffected by international politics and left free to exercise its juridical functions.

(b) It does appear, and should be specifically provided, that no single country should be habitually represented on that Court or given permanent representation.

(c) On the question of a number of Judges, it appears that nine (9) would be adequate and seven (7) should constitute the quorum of the Court.

(d) As to the period of appointment, the system recommended in order to prevent complete disorganization of the Court by the retirement of all the judges at one time is favourably considered. It is the opinion of the Liberian Government that after a period of nine (9) years service any judge should not be eligible for re-election, for thereby a sort of permanent representation of the country of which he is a national would be obviated.

Furthermore, the combined intellects and talents of all of the nations of the world should be able to produce a successor for any one who has served for nine (9) years.

(e) On the question of National and Supplementary Judges this Government is of opinion that provision should be made for them in whatever scheme that is formally adopted for the re-organization of the Court.

That it should provide definitely that each such Judge should sit in conjunction with the Permanent Judges whenever any matter is being heard to which their country is a party.

(f) In order that the Court might be removed from the possibility of alienation from its main objective, this Government's view is that its functions should be purely judicial.

Furthermore, it should have compulsory process over all nations subject to the General International Organization anticipated to be set up after the War; whereby upon the complaint of any nation the other, against whom the complaint is made, would be compelled to abide whatever judgment is given.

(g) This Government recommends that no opinion or judgment of Municipal Courts should be appealable to the Court of International Justice except in cases growing out of international disputes in which jurisdiction is specifically conferred upon the Court by the provisions of treaties in force.

(h) This Government is of opinion that there should be no regional chambers of this Court for it would be a rather involved and intricate system which may hamper the proper functioning of the International Court of Justice.

* * *

MEMORANDUM SUR LA COUR INTERNATIONALE DE JUSTICE, PRESENTE PAR LE GOUVERNEMENT DU LIBERIA

En ce qui concerne le Chapitre VII, le Gouvernement du Libéria soumet les propositions suivantes, concernant la Cour Internationale de Justice:

(a) La Cour en question devrait être un organisme indépendant qui ne serait pas influencé par la politique internationale et qui aurait toute liberté d'action dans l'exercice de ses fonctions juridiques.

(b) Il semble que nul pays ne devrait avoir de représentant habituel à ladite Cour ou y être représenté de façon permanente.

(c) En ce qui concerne le nombre de juges, il semblerait qu'un total de neuf (9) serait adequat et que sept (7) constituerait le quorum de la Cour.

(d) Pour ce qui est de la durée de leur mandat, considération favorable est accordée à la méthode recommandée dans le but d'éviter la désorganisation complète de la Cour, du fait du retrait simultané de la totalité des juges. Le Gouvernement du Libéria estime qu'après un mandat de neuf (9) ans, un juge ne devrait pas être rééligible, afin d'éviter la représentation permanente à la Cour du pays dont il possède la nationalité.

De plus, la combinaison des intelligences et des talents de la totalité des nations du monde devrait être à même de produire un successeur pour toute personne ayant rempli un mandat de neuf (9) ans.

(e) En ce qui concerne la question de juges nationaux et de juges auxiliaires, le Gouvernement du Libéria estime qu'ils devraient être prévus aux dispositions officiellement adoptées pour la réorganisation de la Cour.

Il devrait être décidé, de façon formelle, que chacun de ces juges devrait siéger conjointement avec les juges permanents, à tous les débats de questions auxquelles leur pays serait partie.

(f) Le Gouvernement du Libéria considère que les fonctions de la Cour devraient être purement judiciaires, afin d'éviter toute possibilité que celle-ci ne perde de vue son objectif principal.

De plus, la décision de la Cour devrait être obligatoire pour toutes les nations membres de l'Organisation Générale Internationale qui doit être établie après la Guerre; de sorte que, sur la plainte d'une nation quelconque, toute autre nation faisant l'objet de cette plainte serait tenue de se conformer à l'arrêt rendu.

(g) Le Gouvernement du Libéria recommande qu'aucun avis ou arrêt des Cours Municipales ne puisse être soumis en appel à la Cour de Justice Internationale, excepté lorsqu'il s'agit de questions soulevées par des différends internationaux pour lesquels les dispositions des traités en vigueur reconnaissent formellement la compétence de la Cour.

(h) Le Gouvernement du Libéria estime que ladite Cour ne devrait pas comporter de Chambres Régionales, qui constitueraient un système embrouillé et compliqué susceptible d'entraver le bon fonctionnement de la Cour Internationale de Justice.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

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RESTRICTED
Jurist 21
DP/7
April 11, 1945

PROPOSED REVISION OF ARTICLE 31 SUBMITTED BY THE REPRESENTATIVE OF THE NETHERLANDS

Insert in Article 31 after paragraph 4 a new paragraph (5):

> "In addition to the judges referred to in paragraph 1 or selected or chosen according to paragraphs 2 and 3, the contesting parties may choose by common agreement two judges of another nationality or nationalities than their own; the judges thus chosen shall sit instead of the two youngest regular judges according to age who are not of the nationality of the contesting parties."

Delete in last paragraph after the words "paragraph 2" the words "and 3" and insert instead "3 and 5".

* * *

REVISION DE L'ARTICLE 31 PROPOSEE PAR LE REPRESENTANT DES PAYS-BAS

Insérer à l'article 31 le paragraphe suivant (5) à la suite du paragraphe 4:

> "En outre des juges mentionnés au paragraphe 1 ou nommés ou choisis aux termes des paragraphes 2 et 3, les parties en cause peuvent choisir, d'un commun accord, deux juges de nationalité ou de nationalités différentes de la leur; les juges ainsi choisis siégeront au lieu des deux plus jeunes juges réguliers selon leur ancienneté d'âge, qui ne sont pas de la nationalité des parties en cause."

Au dernier paragraphe, éliminer après les mots "paragraphe 2" les mots "et 3" et insérer les mots "3 et 5".

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
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DP/8
April 12, 1945

MOTION OF THE CHIEF JUSTICE OF NEW ZEALAND

(Seconded by the Delegates of Belgium and Costa Rica)

That a vote be taken on the question whether this Committee favors compulsory reference of justiciable disputes to the Permanent Court of International Justice or the present optional system; and that a subcommittee be then set up to submit a draft of Chapter II to this Committee for consideration on the basis decided by such vote, and to prepare also a draft on the alternative basis so that both proposals may be placed before the Conference at San Francisco for final determination.

(Translation)

RESOLUTION PROPOSEE PAR LE PRESIDENT DU TRIBUNAL DE LA NOUVELLE ZELANDE

(Appuyée par les Délégués
de la Belgique et du Costa-Rica)

De mettre aux voix la question de savoir si ce Comité est en faveur de référer obligatoirement les différends justiciables à la Cour Permanente de Justice Internationale ou s'il préfère le système facultatif actuel; et d'établir ensuite un Sous-Comité qui sera chargé de préparer et de soumettre à ce Comité un projet de Chapitre II afin qu'il soit pris en considération sur les bases décidées par ce vote, et de préparer également un projet alternatif, de manière que les deux projets puissent être soumis pour décision finale à la Conférence à San Francisco.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 27
DP/9
April 12, 1945

PROPOSED REVISION OF ARTICLE 36, SUBMITTED BY THE DELEGATE OF TURKEY

ARTICLE 36

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations and in treaties and conventions in force. [No change]

The members of the United Nations declare that they hereby recognize the jurisdiction of the Court to be compulsory as among themselves in all or any of the classes of legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation.

[Present paragraph 3 omitted]

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court. [No change]

(Translation)

REVISION DE L'ARTICLE 36 DU STATUT PROPOSEE PAR LE DELEGUE DE LA TURQUIE

ARTICLE 36

La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur. [Sans changement]

Les membres des Nations Unies déclarent reconnaître, par la présente, obligatoire entre eux la compétence de la

Cour sur toutes ou quelques unes des catégories de différends d'ordre juridique ayant pour objet:

(a) l'interprétation d'un traité;
(b) tout point de droit international;
(c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;
(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

[Omettre le paragraphe 3 actuel]

En cas de dispute sur le point de savoir si la Cour est compétente, la Cour décide. [Sans changement]

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 63
DP/15
April 18, 1945

PROPOSED REVISION OF ARTICLE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, SUBMITTED BY THE REPRESENTATIVE OF TURKEY

ARTICLE 4.

(1) The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups of the Court of Arbitration and proposed by the governments of these groups, in accordance with the following provisions.

* * *

REVISION DE L'ARTICLE 4 DU STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE PROPOSEE PAR LE REPRESENTATIVE DE LA TURQUIE

ARTICLE 4.

(1) Les membres de la Cour sont élus par l'Assemblée Générale et par le Conseil de Sécurité, sur une liste des personnes présentées par les groupes nationaux de la Cour d'Arbitrage et proposées par le gouvernements de ces groupes, conformément aux dispositions suivantes.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 14
DP/4
April 10, 1945

UNITED KINGDOM PROPOSALS REGARDING THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

I

The United Kingdom supports generally such amendments of a formal character in the several clauses of the Statute as may be necessary to replace references to the League by references to the United Nations Organisation and its Charter, etc. Consequently, no proposals of detail will be made in the following suggestions on this purely formal matter.

The following proposals, so far as they relate to the Constitution of the Court, are directed to two main objects. Firstly, they are inspired by the conception that the object should be to elect the best possible Court, irrespective of considerations of nationality; secondly, on the other hand, they seek indirectly to realise, so far as possible, the largest representation on a geographical basis.

The scheme by which it is sought to produce this result is the following: Each Government a party to the Statute of the Court should nominate a candidate, who should be one of its own nationals, and who would automatically, by the fact of nomination, become a member of the Court. Out of the Members of the Court nine persons would be elected as Judges of the Court by the ordinary machinery of election. Those Members not elected as judges would be available at all times to serve as additional or supplementary judges or to serve as ad hoc judges in cases where their countries were involved as litigants, but had not got one of their nationals as a regular judge of the Court.

If this scheme were put into effect, it would be possible to reduce the number of regular judges of the Court

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without prejudicing the principle of representation on a geographical basis and while making full provision for the possibility of judges being absent through illness, leave or other causes.

II

The following detailed amendments to give effect to these and other points are proposed by the United Kingdom Government. (It is assumed that the necessary changes of detail will in any event be made to make the Permanent Court a part of the United Nations Organisation).

Article 1. Strike out the whole of the second sentence. It seems, under present day conditions, to be unnecessary. With regard to the first sentence of this Article all that would seem to be necessary is some simple provision to the effect that the Court shall function in accordance with the provisions of the Statute

Article 3. This Article should be drafted on some such lines as the following: "The Court shall consist of members of the Court nominated by Governments in accordance with Article 4, of which nine shall be elected as judges".

Article 4. Nomination by the national groups in the Court of Arbitration should be replaced by nomination by Governments. This provision should be to the effect that each Government is to nominate one member, who should be one of its own nationals. The second paragraph of Article 4 would be deleted.

Article 5. The requests here mentioned should be addressed to Governments and not to the members of the Court of Arbitration.

Article 6. Substitute the word "Government" for the words "national Group".

After Article 7 insert a new Article on the following lines: "The persons thus nominated shall constitute the members of the Court, from which the judges of the Court shall be elected, in accordance with Articles 8-12. Members of the Court not elected as judges, shall be available to act as supplementary or additional judges in case of need or to make up the required number of judges under Article

25. Where any country is entitled under Article 31 to have an ad hoc national judge sitting on the Court for the hearing of a particular dispute, the member of the Court nominated by the government of that country shall automatically act as such judge.

Article 8. Substitute "judges" for "members".

Article 9. There is a certain inconsistency between this Article and Article 2, which specifies that judges should be elected regardless of their nationality, since it is hardly possible to give effect to Article 9 without having regard to considerations of nationality. The United Kingdom Government does not desire to make any definite proposal for the amendment of Article 9, but draws attention to the point and suggests that it should be considered by the Conference.

Article 10. The second paragraph should be struck out. According to the system proposed above, there can never be more than one national of any country proposed as a candidate.

Article 13. The first paragraph should be amended on the following lines: "The judges of the Court shall be elected for nine years and may be re-elected; provided, however, that if the judges elected at the first election of the Court, three (to be chosen by lot) shall retire at the end of three years, and, unless re-elected, shall be replaced; and that at the end of six years three more judges (to be chosen by lot from those who have not previously retired and been re-elected) shall similarly retire and, unless re-elected, shall be replaced.

Article 15. For "a member of the court" substitute "a judge of the Court".

Article 16. For "members of the Court" substitute "judge of the Court".

Article 19. This Article is correct in principle but it was consequential on an Article in the Covenant of the League of Nations, according to which all representatives of members of the League, when engaged on the business of the League, were to enjoy diplomatic privileges and immunities. In the same way, the corresponding Article in the new Statute of the Court should be based on the Article in the Charter of the new Organisation dealing with the diplomatic privileges and immunities of the representatives of the members of the Organisation and of its officials.

Article 23. Second paragraph. For "members of the Court" substitute "judges of the Court".

Article 25. Second paragraph. For the word "eleven" substitute "nine" and after the word "Rules of Court" substitute the following for the rest of the paragraph: "may provide for calling upon one or more of the members of the Court, not elected as one of the regular judges, to sit as a judge and thus allow one or more of the regular judges according to circumstances and in rotation to be dispensed from sitting".

Article 25. Third paragraph. For "nine" substitute "seven".

Articles 26 and 27. As the special chambers for labour and transit cases have never been employed, it is suggested that these provisions should be replaced by conferring a general faculty on the Court to constitute special chambers in such cases as may seem appropriate. The Court should also have power to appoint and co-opt technical assessors to sit with it (but without the right to vote) in any case in which the Court considers that this procedure would be desirable.

The provision whereby, in labour cases, the International Labour Office was at liberty to furnish the Court with all relevant information, should be preserved and should be generalized to enable any international organ or institution to furnish the Court with information in any appropriate case.

Article 29. This provision, contemplating a summary procedure for the hearing of urgent cases, has in fact only been used twice and might well be dispensed with, since it would appear that, in general, states which submit a dispute to the Court prefer to have it adjudicated upon by means of the ordinary procedure of the Court. If the summary procedure is, as suggested, done away with, this will entail a corresponding deletion of the paragraphs in Articles 26 and 27, which have reference to this particular form of procedure.

Article 30. Delete the second sentence.

Article 31. Paragraph two. For the phrase "the other party may choose a person to sit as judge" substitute "the member of the Court nominated by the other party shall be appointed to sit as a judge of the Court for the purposes of the dispute." The second sentence of this paragraph should be struck out.

Article 31. Paragraph three. For the phrase "each of these parties may proceed to select a judge, as provided in the preceding paragraph" substitute "the members of the Court nominated by these parties shall be appointed to act as judges of the Court for the purposes of the dispute."

Article 31. Paragraph 4 should be struck out.

Article 32. First paragraph. For "members of the court" substitute "judges of the Court."

Article 32. Paragraph 4. This should be reworded so as to provide that members of the Court not being regular judges should receive an indemnity for each day on which they sit, but no regular salary or only a small one.

Article 33. The United Kingdom Government suggests that consideration should be given by the Committee to the question whether, despite the fact that the Court is to be an organ of the United Nations Organisation, its finances should not nevertheless be placed upon an independent basis, and not be part of the finances of the Organisation.

Article 36. First Paragraph. The words "all cases" should be altered to "all cases of a justiciable character." This alteration would bring this paragraph into line with the second paragraph of Article 36, in which it is clearly contemplated that the cases to be submitted to the Court shall be of a legal character.

One question which will arise in connection with Article 36, is what action should be taken concerning the existing acceptances of the "optional clause", by which a number of countries have, subject to certain reservations, bound themselves to accept the jurisdiction of the Court as obligatory. Should these acceptances be regarded as having automatically come to an end or should some provision be made for continuing them in force with perhaps a provision by which those concerned could revise or denounce them.

III Procedure

There are a number of provisions in this Chapter, for instance Articles 45, 47, 48, 49, 51, 52, and 54, which might well form the subject of rules of the Court rather than figure, as they do at present, in the substantive Articles of the Statute. Consideration should be given to the question of transferring such provisions to the rules of the Court.

Articles 56 and 57. The present system under which there is one opinion representing the judgment of the Court, while, on the other hand, there may be as many dissenting opinions as there are dissenting judges, is not entirely satisfactory. Each dissenting judgment, being the work of one particular person, forms a coherent whole, whereas the opinion which represents the judgment of the Court is an amalgamation of the views of a number of judges. The result in the past has not infrequently been that the dissenting judgments read more convincingly than the judgment of the Court itself. It is suggested that a better system for the future would be to require every judge, whether of the majority or of the minority view, to set forth the reasons for his view in a separate opinion.

IV Advisory Opinions

Article 65. The jurisdiction to give advisory opinions is at present limited to those cases in which such an opinion is requested by the appropriate body of the International Organisation. There does not appear to be any sufficient ground for this limitation and it is suggested that the faculty to give advisory opinions, which has proved in the past to be of great value, should be extended to two further classes of cases. In the first place, it should be open to any recognised and properly constituted International Organisation to apply directly to the Court with a request for an advisory opinion. Secondly, it is suggested that it would also be of great value if States, by agreement amongst themselves (not, of course, unilaterally), were able to apply to the Court for an advisory opinion. They would thus, in many cases, obtain advice as to their legal position which would prevent an eventual dispute leading to litigation.

If the foregoing suggestions concerning advisory opinions were adopted, it would, of course, be necessary to introduce safeguards, with a view to ensuring that the requests addressed to the Court were confined to matters of a strictly justiciable nature, and, moreover, related to actual matters of fact which had arisen between the parties concerned. To achieve this, it would be desirable to confer on the Court a right to reject any request for an advisory opinion, if the Court considered that, in the circumstances, the request was not one to which it, as a court of law, ought to accede.

New Article. Suitable provision should be made for enabling the Statute of the Court to be amended without the necessity of obtaining the unanimous consent of all the parties.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 44
DP/13
April 14, 1945

PROPOSALS OF THE UNITED KINGDOM ON ARTICLES 3-13*

Article 3.

The Court shall consist of fifteen members.

Article 4.

The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated in accordance with Articles 5-7.

The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.

Article 5.

At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the Governments of Members of the United Nations and States parties to the Statute inviting each of them to undertake, within a given time, the nomination of a person of their own nationality in a position to accept the duties of a member of the Court.

Article 6.

Before making these nominations, each Government is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

Article 7.

The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the General Assembly and to the Security Council.

[*For accuracy of title see Jurist Doc 57, Pages 7 and 8]

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

Article 10.

Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second, and if necessary, a third meeting shall take place.

Article 12.

If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed, at any time, at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

Article 13.

The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election of the Court, three (to be chosen by lot) shall retire at the end of three years, and, unless re-elected, shall be replaced; and that at the end of six years three more judges (to be chosen by lot from those who have not previously retired and been re-elected, shall be replaced. Thereafter one third of the members of the Court shall retire every three years on expiry of their current period of service, subjection to re-election.

The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court the resignation will be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 5
G/5
April 9, 1945

THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE WITH REVISIONS PROPOSED BY THE UNITED STATES

/Note: This is the cover sheet for the U. S. Delegation document on this subject (US Jur. 1) which was circulated to the Committee on April 9. Please attach this cover to US Jur. 1 which should hereafter be listed as Committee document No. 5 (Jurist 5) as indicated in the upper right hand corner of this sheet./

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SECRET

US Jur 1
G-1
April 2, 1945

UNITED NATIONS JURIST'S CONFERENCE

The Statute of the Permanent Court of International Justice with Proposed Revisions

Introductory Note

The Statute of the Permanent Court of International Justice contains sixty-eight articles. Changes in twenty-five of these are made in this proposal for revision, and one article (No. 69, on amendments) is added. In eleven articles changes are made for the purpose of referring to The United Nations or its appropriate organs, instead of to the League of Nations. In three articles, a qualifying adjective or phrase, or a reference to the Statute, is either added, altered, or omitted. Substantive changes are proposed in eleven articles as follows:

Art. 1 - The Permanent Court of International Justice, as adapted to the purposes of The United Nations should be the chief judicial organ of The United Nations.

Art. 10 - The phrase "State or" is added.

Art. 15 - There is provided an age limit for election of judges, a compulsory retirement age, and a nine-year term for all judges elected.

Art. 26 - Provision is made for the establishment of chambers, superseding the special chambers provided for by Articles 26 and 27 of the present Statute.

Art. 27 - A provision of the 1936 Rules of the Court is adopted.

Art. 32 - The salaries of judges are to be fixed by the General Assembly of The United Nations in accordance with the Dumbarton Oaks Proposals.

Art. 33 - The apportionment of the expenses of the Court is to be fixed by the General Assembly

of

of The United Nations, in accordance with the Dumbarton Oaks Proposals.

Art. 34 - It is provided that public international organizations in general (and not merely the International Labor Organization) may furnish information to the Court.

Art. 36 - The jurisdiction of the Court is altered to include expressly matters which are provided for in the Charter of The United Nations.

Art. 37 - When a treaty provides for reference of a matter to a tribunal instituted by the League of Nations or by The United Nations, the Court is to be the tribunal.

Art. 65 - This article provides that advisory opinions may be requested only on the authority of the Security Council, in conformity with the Dumbarton Oaks Proposals.

Article 69 is entirely new, there being no provision for amendment in the present Statute.

Secret

US Jur 1
G-1
April 2, 1945

UNITED NATIONS COMMITTEE OF JURISTS

STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE*

WITH PROPOSED REVISIONS

[The barred words are omitted, and the underscored words are added, by the proposed revisions.]

Article 1.

~~A~~ The Permanent Court of International Justice ~~is hereby established, in accordance with Article 14 of the Covenant of the League of Nations,~~ established by the Protocol of Signature of December 16, 1920 and the Protocol for the Revision of the Statute of September 14, 1929 shall be, as adapted to the purposes of The United Nations, the chief judicial organ of The United Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

Chapter I

Organization of the Court

Article 2.

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3.

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*English version, revision in force on February 1, 1936

Article 3.

The Court shall consist of fifteen members.

Article 4.

The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

In the case of Members of ~~the League of Nations~~ The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

The conditions under which a State which has accepted the Statute of the Court but is not a Member of ~~the League of Nations~~ The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.

Article 5.

At least three months before the date of the election, the Secretary-General of ~~the League of Nations~~ The United Nations shall address a written request to the members of the Permanent Court of Arbitration ~~belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently~~, and to the ~~persons~~ members of the national groups appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality.

In

In no case must the number of candidates nominated be more than double the number of seats to be filled.

Article 6.

Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

Article 7.

The Secretary-General of ~~the League of Nations~~ The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

Article 10.

Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

In the event of more than one national of the same State or Member of ~~the League~~ The United Nations being elected by the votes of both the General Assembly and the Security Council, the eldest

of

of these only shall be considered as elected.

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and. if necessary, a third meeting shall take place.

Article 12.

If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed, at any time, at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of ~~the League of Nations~~ The United Nations. This last notification makes the place vacant.

Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of ~~the League of Nations~~ The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council at its next session.

Article 15.

~~A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.~~ The term of a member of the Court shall expire upon his attaining the age of seventy-five years, and no person may be elected a member of the Court after he has attained the age of seventy-two years.

Article 16.

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

Any doubt on this point is settled by the decision of the Court.

Article 17.

No member of the Court may act as agent, counsel or advocate in any case.

No

No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

Article 18.

A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of ~~the League of Nations~~ The United Nations, by the Registrar.

This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 21.

The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

Article 22.

The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

Article 23.

The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in traveling.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

Article 26

Labor cases, particularly cases referred to in Part XIII (Labor) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labor Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one-half representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

In

In Labor cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

The Court may from time to time form one or more chambers for dealing with particular cases or with particular categories of cases. The Court's rules may provide for assessors to sit with such chambers, without the right to vote.

If the parties so request, cases will be heard and determined by such chambers

Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

A judgment

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The special chambers provided for in Articles 26 and ~~27~~ 29 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

Article 30.

The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

Article 31.

Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

The

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms or complete equality with their colleagues.

Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the General Assembly of the League of Nations The United Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

Regulations

Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by ~~the League of Nations~~ The United Nations, in such a manner as shall be decided by the General Assembly. ~~upon the proposal of the Council.~~

Chapter II

Competence of the Court

Article 34.

Only States or Members ~~of the League of Nations~~ The United Nations can be parties in cases before the Court.

The Court may, subject to and in conformity with its own rules, request of public international organizations information relevant to cases before it, and it shall receive such information voluntarily presented by such organizations.

Article 35.

The Court shall be open to the Members of ~~the League~~ The United Nations and also to States ~~mentioned in the Annex to the Covenant~~ parties to the Statute.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When

When a State which is not a Member of ~~the League of Nations~~ The United Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36.

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties and conventions in force.

The Members of ~~the League of Nations~~ The United Nations and the States ~~mentioned in the Annex to the Covenant~~ parties to the Statute may, ~~either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment,~~ at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) the interpretation of a treaty;

(b) any question of international law:

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37.

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or The United Nations, the Court will be such tribunal.

Article 38.

The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognized by civilized nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

Chapter III

Procedure

Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use

the

the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorize a language other than French or English to be used.

Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of ~~the League of Nations~~ The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

The parties shall be represented by agents.

They may have the assistance of counsel or advocates before the Court.

Article 43.

The procedure shall consist of two parts: written and oral.

The

The written proceedings shall consist of the communication to the Judges and to the parties of Cases, Counter-Cases and, if necessary, Replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior Judge present shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with

Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

Article 55.

All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

Article 56.

The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

Article 62.

Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It shall be for the Court to decide upon this request.

Article 63.

Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

Chapter IV

Advisory Opinions

Article 65.

Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the ~~President of the Assembly or the~~ President of the Security Council of ~~the League of Nations~~, or by the Secretary-General of ~~the League~~ The United Nations under instructions from the ~~Assembly or~~ the Security Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of ~~the League of Nations~~ The United Nations, through the Secretary-General of ~~the League~~ The United Nations, and to any States entitled to appear before the Court.

The

The Registrar shall also, by means of a special and direct communication, notify any Member of ~~the League~~ The United Nations or State admitted to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

2. Members, States, and organizations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of ~~the League of Nations~~ The United Nations and to the representatives of Members of ~~the League~~ The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

Chapter V

Chapter V

Amendment

Article 69.

Amendments to this Statute, proposed by the General Assembly of The United Nations acting by majority vote, shall become effective when ratified in accordance with their constitutional processes by two-thirds of the members of The United Nations, including all of the states having permanent seats on the Security Council.

THE UNITED NATIONS
COMMITTEE OF JURISTS
Washington, D. C.

Jurist 6
G/6
April 10, 1945

CONFERENCE DES JURISTES DES NATIONS UNIES

STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE AVEC LES REVISIONS PROPOSEES PAR LES JURISTES DES ETATS-UNIS

NOTE INTRODUCTIVE

Le Statut de la C.P.J. contient soixante huit articles. Les modifications faites dans les propositions de révision qui suivent affectent vingt cinq d'entre eux, et un article (l'article 69 sur les amendements) est ajouté. Dans onze articles, les modifications ont pour objet de substituer la référence aux Nations Unies ou à leurs organes propres à celle concernant la Société des Nations. Dans trois articles, un adjectif ou une phrase de qualification, ou une référence au Statut se trouve ajouté, modifié ou supprimé.

Statut de la Cour Permanente de Justice Internationale avec les révisions proposées

> Les mots barrés sont supprimés et les mots soulignés sont ajoutés par les révisions proposées. Les articles non modifiés de l'ancien statut sont simplement signalés par leur numéro.

ARTICLE 1

Indépendamment de la Cour d'arbitrage, organisée par les Conventions de La Haye de 1899 et 1907, et des Tribunaux spéciaus d'arbitres auxquels les Etats demeurent toujours libres de confier la solution de leurs différents, ~~conformément à l'article 14 du Pacte de la Société des Nations~~, la Cour Permanente de Justice Internationale, établie par le Protocole de signature du 16 Décembre 1920, et le Protocole pour la révision du 14 Septembre 1929, sera, pour répondre aux besoins des Nations Unies, l'organisme judiciaire principal des Nations Unies.

ARTICLES 2 and 3

Sans modification.

ARTICLE 4

Les Membres de la Cour sont élus par l'Assemblée Générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées par les Groupes Nationaux de la Cour Permanente d'arbitrage, conformément aux dispositions suivantes.

En ce qui concerne les Membres ~~de la Société~~ des Nations Unies qui ne sont pas représenté~~es~~ à la Cour Permanente d'arbitrage les listes de candidats seront présentées par des Groupes Nationaux, désignés à cet effet par leurs Gouvernements, dans les mêmes conditions que celles stipulées peur les Membres de la Cour d'arbitrage par l'Article 44 de la Convention de La Haye de 1907 sur le réglement pacifique des conflits internationaux.

En l'absence d'un accord spécial, l'Assemblée Générale sur la proposition du Conseil de Sécurité, réglera les conditions auxquelles peut participer à l'élection des Membres de la Cour, un Etat qui, tout en ayant accepté le statut de la Cour, n'est pas Membre ~~de la Societé des Nations~~ des Nations Unies.

ARTICLE 5

Trois mois au moins avant la date de l'élection, le Secrétaire Général ~~de la Société des Nations~~ des Nations Unies invite par écrit les Membres de la Cour Permanente d'arbitrage ~~appartenant aux Etats mentionnés à l'annexe au Pacte ou entrées ultérieurement dans la Société des Nations~~, ainsi que les ~~personnes~~ Membres des Groupes Nationaux désignés conformément à l'alinéa 2 de l'Article 4, à procéder dans un délai déterminé par Groupes Nationaux à la présentation de personnes en situation de remplir les fonctions de Membre de la Cour.

Chaque groupe ne peut en aucun cas présenter plus de quatre personnes dont deux au plus de sa nationalité. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

ARTICLE 6

Sans modification.

ARTICLE 7

Le Secrétaire Général ~~de la Société des Nations~~ des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées: seules ces personnes sont éligibles sauf le cas prévu à l'article 12, paragraphe 2.

Le Secrétaire Général communique cette liste à l'Assemblée Générale et au Conseil de sécurité.

ARTICLE 8

L'Assemblée Générale et le Conseil de Sécurité procèdent indépendamment l'un de l'autre à l'élection des Membres de la Cour.

ARTICLE 9

Sans modification.

ARTICLE 10

Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée Générale et dans le Conseil de sécurité.

Au cas où le double scrutin de l'Assemblée Générale et du Conseil de sécurité se porteraient sur plus d'un ressortissant du même Etat ou Membre ~~de la Société des Nations~~ des Nations Unies, le plus agé est seul élu.

ARTICLE 11

Sans modification.

ARTICLE 12

Si après la troisième séance d'élection, il reste encore des sièges à pourvoir, il peut être à tout moment formé sur la demande soit de l'Assemblée Générale, soit du Conseil de sécurité une Commission médiatrice de six Membres, nommés trois par l'Assemblée Générale et trois par le Conseil de sécurité, en vue de choisir pour chaque siège non pourvu un nom à présenter à l'adoption séparée de l'Assemblée Générale et du Conseil de sécurité.

Peuvent être portées sur cette liste à l'unanimité toutes personnes satisfaisant aux conditions requises alors même qu'elles n'auraient pas figuré sur la liste de présentation visée aux articles 4 et 5.

Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les Membres de la Cour déjà nommés pourvoient aux sièges vacants, dans un dèlai à fixer par le Conseil de sécurité, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée Générale, soit dans le Conseil de sécurité.

Si parmi les Juges il y a partage égal des voix, la voix du Juge le plus agé l'emporte.

ARTICLE 13

Les membres de la Cour sont élus pour neuf ans.

Ils sont rééligibles.

Ils restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire général ~~de la Société des Nations~~ des Nations Unies.

Cette dernière notification emporte vacance de siège.

ARTICLE 14

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire général ~~de la Société des Nations~~ des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de Sécurité dans sa pemière session.

ARTICLE 15

~~Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.~~ Le mandat du membre de la Cour expirera quand il aura atteint l'âge de 75 ans, personne ne pourra être élu membre de la Cour après qu'il a atteint l'âge de 72 ans.

ARTICLE 16

Sans changement.

ARTICLE 17

Sans changement.

ARTICLE 18

Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

Le Secrétaire général ~~de la Société des Nations~~ des Nations Unies en est officiellement informé par le Greffier.

Cette communication emporte vacance de siège.

ARTICLE 19

Sans changement.

ARTICLE 20

Sans changement.

ARTICLE 21

Sans changement.

ARTICLE 22

Sans changement.

ARTICLE 23

Sans changement.

ARTICLE 24

Sans changement.

ARTICLE 25

Sans changement.

ARTICLE 26

Pour les affaires concernant le travail, et spécialement pour les affaires visées dans la Partie XIII (Travail) du Traité de Versailles et les parties correspondantes des autres traités de paix, la Cour statuera dans les conditions ci-après:

La Cour constituera pour chaque période de trois années une chambre spéciale composé de cinq juges désignés en tenant compte, autant que possible, des prescriptions de l'article 9. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger. Sur la demande des parties, cette Chambre statuera. A défaut de cette demande, la Cour siégera en séance plénière. Dans les deux cas, les juges sont assistés de quatre assesseurs techniques siégeant à leurs côtés avec voix consultative et assurant une juste représentation des intérêts en cause.

Les assesseurs techniques sont choisis dans chaque cas spécial d'après les règles de procédure visées à l'article 30, sur une liste d'"Assesseurs pour litiges de travail", composée de noms présentés à raison de deux par chaque Membre de la Société des Nations et d'un nombre égal présenté par le Conseil d'administration du Bureau international du Travail. Le Conseil désignera par moitié des représentants des travailleurs et par moitié des représentants des patrons pris sur la liste prévue à l'article 412 du Traité de Versailles et aux articles correspondants des autres traités de paix.

Le recours à la procédure sommaire visée à l'article 29 reste toujours ouvert dans les affaires visées à l'alinéa premier du présent article, si les parties le demandent.

Dans les affaires concernant le travail, le Bureau international aura la faculté de fournir à la Cour tous les renseignements nécessaires et, à cet effet, le Directeur de ce Bureau recevra communication de toutes les pièces de procédure présentées par écrit.

La Cour pourra constituer de temps à autre une ou plusieurs Chambres en vue de traiter des particulières ou des catégories particulières des affaires. Le Règlement de la Cour pourra pourvoir à des assesseurs qui siègeront à de telles Chambres avec voix consultative.

Si les parties le demandent, lesdites Chambres statueront.

ARTICLE 27

~~Pour les affaires concernant le transit et les communications, et spécialement pour les affaires visées dans la Partie XII (Ports, Voies d'eau, Voies ferrées) du Traité de Versailles et les parties correspondantes des autres traités de paix, la Cour statuera dans les conditions ci-après:~~

~~La Cour constituera, pour chaque période de trois années, une Chambre spéciale composée de cinq juges désignés en tenant compte autant que possible des prescriptions de l'article 9. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger. Sur la demande des parties, cette Chambre statuera. A défaut de cette demande, la Cour siégera en séance plénière. Si les parties le désirent, ou si la Cour le décide, les juges seront assistés de quatre assesseurs techniques siégeant à leurs côtés avec voix consultative.~~

~~Les assesseurs techniques seront choisis dans chaque cas spécial d'après les règles de procédure visées à l'article 30, sur une liste d'"Assesseurs pour litiges de transit et de communications", composée de noms présentés à raison de deux par chaque Membre de la Société des Nations.~~

~~Le recours à la procédure sommaire visée à l'article 29 reste toujours ouvert dans les affaires visées à l'alinéa premier du présent article, si les parties le demandent.~~

La décision de l'une quelconque des Chambres prévues aux articles 26 et 29 sera la décision rendue par la Cour.

ARTICLE 28

Les chambres ~~spéciales~~ prévues aux articles 26 et ~~27~~ 29 peuvent, avec le consentement des parties en cause, siéger ailleurs qu'à La Haye.

ARTICLE 29

Sans changement.

ARTICLE 30

Sans changement.

ARTICLE 31

Sans changement autre que la suppression de la référence à l'article 27.

ARTICLE 32.

Les membres de la Cour recoivent un traitement annuel.

Le Président reçoit une allocation annuelle spéciale.

Le Vice-Président reçoit une allocation spéciale pour chaque jour ou il remplit les fonctions de président.

Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale ~~de la Société des Nations~~ des Nations Unies ~~sur la proposition du Conseil~~. Ils ne peuvent être diminués pendant la durée des fonctions.

Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

Un règlement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

Les traitements, indemnités et allocations sont exempts de tout impôt.

ARTICLE 33.

Les frais de la Cour sont supportés par ~~la Société des Nations~~ les Nations Unies de la manière que l'Assemblée générale décide. ~~sur la proposition du Conseil~~.

Chapitre II

Compétence de la Cour.

ARTICLE 34.

Seuls les Etats ou les Membres ~~de la Société des Nations~~ des Nations Unies ont qualité pour se présenter devant la Cour.

La Cour pourra, en se conformant à son propre Règlement, demander aux organisations internationales publiques des reseignements relatifs aux affaires portées devant elle, et elle recevra les renseignements qui lui seraient volontairement présentés par ces organisations.

ARTICLE 35.

La Cour est ouverte aux Membres ~~de la Société des Nations~~ des Nations Unies ainsi qu'aux Etats ~~mentionnés à l'annexe au Pacte~~ parties au Statut.

Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

Lorsqu'un Etat, qui n'est pas membre ~~de la Société des Nations~~ des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

ARTICLE 36.

La compétence de la Cour s'étend à toutes affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur.

Les Membres ~~de la Société~~ des Nations Unies et Etats ~~mentionnés à l'annexe au Pacte~~ parties au Statut pourront, ~~soit lors de la signature ou de la ratification du Protocole, auquel le présent Acte est joint, soit ultérieurement,~~ à n'importe quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou Etat acceptant la même obligation, la juridiction de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:

(a) l'interprétation d'un traité;
(b) tout point de droit international;
(c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;
(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou poûr un délai déterminé.

En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

ARTICLE 37.

Lorsqu'un traité ou convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou les Nations Unies, la Cour constituera cette juridiction.

ARTICLE 38.

Sans changement.

Chapitre III

Procédure.

ARTICLE 39.

Sans changement.

ARTICLE 40.

Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffe; dans les deux cas, l'object du différend et les parties en cause doivent être indiqués.

Le Greffe donne immédiatement communication de la requête à tous intéressés.

Il en informe également les Membres ~~de la Société des Nations~~ des Nations Unies par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

ARTICLE 41.

La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

ARTICLE 42.

Sans changement.

ARTICLE 43.

Sans changement.

ARTICLE 44.

Sans changement.

ARTICLE 45.

Sans changement.

ARTICLE 46.

Sans changement.

ARTICLE 47.

Sans changement.

ARTICLE 48.

Sans changement.

ARTICLE 49.

Sans changement.

ARTICLE 50.

Sans Changement.

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ARTICLE 51.

Sans changement.

ARTICLE 52.

Sans changement.

ARTICLE 53.

Sans changement.

ARTICLE 54.

Sans changement.

ARTICLE 55.

Sans changement.

ARTICLE 56.

Sans changement.

ARTICLE 57.

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ARTICLE 58.

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ARTICLE 59.

Sans changement.

ARTICLE 60.

Sans changement.

ARTICLE 61.

Sans changement.

ARTICLE 62.

Sans changement.

ARTICLE 63.

Sans changement.

ARTICLE 64.

Sans changement.

Chapitre IV.

Avis consultatifs.

ARTICLE 65.

Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par le ~~président de l'Assemblée ou par le~~ président du Conseil de Sécurité ~~de la Société des Nations~~, soit par le Secrétaire général ~~de la Société~~ des Nations Unies agissant en vertu d'instructions ~~de l'Assemblée ou~~ du Conseil de Sécurité.

La requête formule,en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

ARTICLE 66.

1. Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres ~~de la Société des Nations~~ des Nations Unies par l'entremise du Secrétaire général ~~de la Société~~ des Nations Unies, ainsi qu'aux Etats admis à ester en justice devant la Cour.

En outre, tout Membre ~~de la Société~~ des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siège pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

Si un des Membres de la Société ou des Etats mentionnés au premier alinéa du présent paragraphe, n'ayant pas été l'objet de la communication spéciale cidessus visée, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

2. Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. À cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

ARTICLE 67.

La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire général ~~de la Société des Nations~~ des Nations Unies et les représentants des Membres ~~de la Société~~ des Nations Unies, des Etats et des organisations internationales directement intéressés étant prévenus.

ARTICLE 68.

Sans changement.

Chapitre V.

Amendement

ARTICLE 69.

Les amendements à ce Statut, proposés par l'Assemblée générale des Nations Unies votant à la majorité, entreront en vigueur après avoir été ratifiés, selon leurs procedures constitutionnelles, par les deux-tiers des Membres des Nations Unies, y compris tous les Etats ayant un siège permanent au Conseil de Sécurité.

3.

Translation by
Courtesy of
French Embassy.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 17 (6)
G/13
April 11, 1945

CORRECTION DU TEXTE FRANCAIS DES ARTICLES 26 ET 27 DU STATUT DE LA COUR DE JUSTICE INTERNATIONALE, PROPOSEE PAR LA DELEGATION FRANCAISE

(La présente est une correction du Document Jurist 6, G/6, en date du 10 Avril 1945.)

ARTICLE 26.

La Cour peut, de temps à autre, constituer une ou plusieurs Chambres pour connaître d'affaires déterminées ou de catégories déterminées d'affaires. Le Réglement de la Cour pourra pourvoir à l'institution d'assesseurs siégeant dans ces Chambres sans droit de vote.

A la demande des parties, les affaires seront soumises à ces Chambres et jugées par elles.

ARTICLE 27.

Tout jugement rendu par l'une des Chambres prévues aux articles 26 et 29 sera un jugement rendu par la Cour.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 7
DF/1
April 10, 1945

PROPOSED REVISION OF ARTICLE 2 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, SUBMITTED BY THE REPRESENTATIVE OF VENEZUELA

Article 2. The Permanent Court of International Justice shall be composed of a body of independent judges elected on the exclusive basis of their technical qualifications and personal reputation.

* * *

RÉVISION DE L'ARTICLE 2 DU STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE PROPOSÉE PAR LE REPRESENTATIVE DU VÉNEZUELA

Article 2. La Cour Permanente de Justice Internationale est un corps de magistrats indépendants, élus exclusivement en raison de leurs qualités techniques et de leur réputation personnelle.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 13
DP/3
April 10, 1945

REVISION OF ARTICLES 4 TO 14 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, SUBMITTED BY THE REPRESENTATIVE OF VENEZUELA

(With French Translation)

Article 4

The representatives of the Court shall be elected by the General Assembly of the United Nations from a list of representatives nominated by the governments.

The conditions under which a state which has accepted the Statute of the Court, but is not a member of the United Nations, may participate in electing the members of the Court shall, in the absence of special agreement, be laid down by the General Assembly.

Article 5

At least three months before the date of the election, the Secretary General of the United Nations shall address a written request to the governments, requesting them to nominate a person in a position to accept the duties of a member of the Court.

No government may nominate more than one person.

Article 6

Before making these nominations, each government is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

Article 7

The Secretary General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated.

The Secretary General shall submit this list to the General Assembly.

Article 8

The General Assembly shall proceed to elect the members of the Court.

Article 9

At every election the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

Article 10

The candidate who obtains an absolute majority of votes in the General Assembly shall be considered as elected.

Article 11

(Delete)

Article 12

(Delete)

Article 13

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court. This notification makes the place vacant.

Article 14

Vacancies which may occur shall be filled by the deputy judges in the order of their election.

The Court should not have more than two judges with the same nationality.

* * *

REVISION DES ARTICLES 4 A 14 DU STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE, PROPOSEE PAR LE REPRESENTANT DU VENEZUELA

Article 4

Les membres de la Cour sont élus par l'Assemblée Générale des Nations Unies sur une liste des représentants nommés par les gouvernements.

En l'absence d'accord spécial, l'Assemblée Générale règlera les conditions auxquelles peut participer à l'élection des membres de la Cour un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas membre des Nations Unies.

Article 5

Trois mois au moins avant la date de l'élection, le Secrétaire Général des Nations Unies invite par écrit les gouvernements à procéder à la présentation d'une personne en situation de remplir les fonctions de membre de la Cour.

Aucun gouvernement ne pourra présenter plus d'une personne.

Article 6

Avant de procéder à cette désignation, il est recommandé à chaque gouvernement de consulter sa plus haute Cour de Justice, ses Facultés et Ecoles de Droit, aussi que ses Académies Nationales et les sections nationales d'Académies Internationales vouées à l'étude du droit.

Article 7

Le Secrétaire Général des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes aimsi désignées.

Le Secrétaire Général communique cette liste à l'Assemblée Générale.

Article 8

L'Assemblée Générale procède à l'élection des membres de la Cour.

Article 9

Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent, dans l'ensemble, la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde.

Article 10

Sont élus les candidats qui ont obtenu la majorité absolue des voix dans l'Assemblée Générale.

Article 11

(Supprimé)

Article 12

(Supprimé)

Article 13

Les membres de la Cour sont élus pour neuf ans.

Ils sont rééligibles.

Ils restent en fonctions jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour.

Cette notification emporte vacance de siège.

Article 14

Les juges suppléants occuperont, dans l'ordre de leur élection, les sièges qui pourraient devenir vacants.

La Cour ne devra pas avoir plus de deux juges de la même nationalité.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 16
G/12
April 10, 1945

MEMORANDUM PRESENTED BY THE DELEGATION OF VENEZUELA ON BASES FOR THE ORGANIZATION OF THE INTERNATIONAL COURT OF JUSTICE

Among the resolutions adopted at Dumbarton Oaks was one recognizing the need of setting up an international court of justice as the juridical body of the organization contemplated by said Proposals.

The antecedents available from the Permanent International Court of Justice of The Hague are widely known. The meritorious work done by it through the years, and the modifications from time to time sustained by it constitute a fund of valuable experience for adaptation of that legal organization, in its entirety, to the new needs of the community of nations.

These reasons were taken into account at Dumbarton Oaks, when proposing the alternative either that the statute of the Court there contemplated become the present statute of the Permanent International Court of Justice, which would continue in force with such changes as might be expedient, or otherwise that a new statute be adopted which would be structurally based upon the former.

The mission that will have to be discharged by the International Court of Justice in the future organization will be one of the most serious and transcendent for the maintenance of peace among the nations. It would seem indispensable to enhance its prestige and authority, by clearly determining the scope of its jurisdiction and the machinery of its operation, in everything connected with the peaceful settlement of controversies. It would also be advisable to define just what its connection with other bodies appertaining to the organization would be, to support its interposition in conflicts of a political nature so as to secure its opinion on the legal points arising in such controversies and to procure universality of the court by all pertinent means. The method of electing the members of the court and the extension of its competence to the international administrative field are also important aspects which it would be advisable to take into account.

The Government of Venezuela has carefully studied these problems taking into consideration the resolutions adopted at the Dumbarton Oaks Conference and, very specially, the report of the un-official Inter-Allied London Committee on the future of the Permanent International Court of Justice. As a result of this study, it submits to the consideration of the United Nations Committee of Jurists the following

BASES FOR THE ORGANIZATION OF AN INTERNATIONAL COURT OF JUSTICE

I.- GENERAL PROBLEMS

1.- The court should be the essential integrating element of the international organization.

2.- The members of the international organization would, for all purposes, be members of the court. The States which are not members of the organization would also not be members of the court, in that they would not participate in its organization or in the designation of its membership; provided, however, that they should have some relation with the said entity, so as to submit themselves to, or fall under, its jurisdiction.

3.- The statute of the court should be substantially the same as that of the permanent international court of justice, with the changes required by the new international conditions.

4.- The statute of the court should be approved and ratified together with the general agreement for the establishment of the organization, and as an instrument complementary to it.

5.- There should be only one court, and its decision should not be subject to appeal. This would not prevent recourse to review, just as was the case with the permanent international court of justice.

6.- Notwithstanding the secondary nature of these problems, it seems desirable to recommend that the court have its seat in a territory other than that where the political bodies of the organization meet regularly--the seat might continue to be at The Hague. It would be desirable that provision be made to enable the Court to convene outside of its permanent seat, in exceptional cases. The name adopted at Dumbarton Oaks seems to be adequate: Court or Tribunal of International Justice.

II.- PROBLEMS RELATIVE TO THE ORGANIZATION AND PROCEDURE OF THE COURT

1.- It would be desirable to cut the number of active members of the court to nine, and to establish a quorum of seven members for its operation.

2.- It also seems desirable to retain the same term of office of the judges (nine years), but provision should be made for their partial replacement every three years, that is, that every three years three judges should be elected. It would be desirable to consider the adoption of compulsory retirement of the judges upon reaching the age of 70.

3.- It seems desirable, further, to recommend a procedure of election based on the following plan:

1).- The government of each member state of the organization shall appoint two representatives. The governments should be urged to appoint jurists with technical qualifications and recognized reputations, and, in making such appointments, to hear the opinion of the law schools, of the highest courts, and, in general, of the representative organizations of the national juridic science.

2).- The representatives appointed by the governments shall constitute an international electoral college; their term of office shall be nine years; and they shall function in the college in accordance with their free individual opinions.

3).- The electoral college referred to shall name five candidates for each vacancy for the office of judge which is to be filled. These candidates shall be appointed by a majority of votes, for which purpose each representative shall cast one vote. When it is necessary to fill a vacancy caused by the completion of the term of a judge, the college shall place the name of the outgoing judge at the top of the above-mentioned list. The ballots of the representatives may be cast in person or by mail, and the Secretariat of the court shall act as the Secretariat of the college.

4).- The general assembly shall appoint a regular judge and two alternates, from the list of five candidates submitted to it by the college.

5).- The candidates designated by the college may or may not be members of the college, and they shall be elected on the exclusive basis of their technical qualification and personal reputation.

4.- In the event that, in a question brought before the court, one of the judges has the same nationality as one of the parties, the other party would have the right to appoint a supplementary judge to the membership of the electoral college.

5.- The court may not have more than two judges with the same nationality.

III.- PROBLEMS RELATIVE TO THE DUTIES AND OPERATION OF THE COURT

A) Jurisdiction

1.- The court would be competent for any question that the parties might submit to its jurisdiction.

2.- The jurisdiction of the court would be compulsory for the members of the general organization in conflicts of a juridical nature. In this connection, it would be desirable to give to such conflicts a general designation, to be followed, as an explanatory title, by a reference to the cases foreseen in Article 36 of the Statute of the Permanent International Court of Justice and in the second paragraph of Article 13 of the Covenant of the League of Nations.

3.- The court shall determine the limits of its competence. In consequence, exceptions relative to political conflicts and to questions falling under the internal jurisdiction of a State should be heard as exceptions before the court.

4.- The court shall hear a case whenever any other means of pacific settlement may have failed or may not have been made effective, and this course may be followed at the request of any of the parties.

5.- It seems desirable to allow the court to hear a case suggested to it by the Council.

6.- In the event of a conflict between States which are not members of the organization, in the assumption that the general organization is not made universal, it seems desirable to establish:

a) that a State which is not a member be enabled to go before the court against a member State;

b) that a member State should be enabled to go before the court against a non-member State;

c) that provision be made for the possibility that non-member States subscribe to a clause of submission to the jurisdiction of the court; and

d) that the council may transmit to the court juridical conflicts to which non-member States are parties.

7.- The council should be empowered to dictate precise measures to impose the jurisdiction of the court or to execute its decisions. In such action by the council the requirements of the procedure relating to a unanimous vote or to an excessively qualified vote should be eliminated or reduced as much as possible; in any event the possible existence of the power of suspensive veto on the part of a great power concerned should be eliminated.

8.- A study should be made of a way to differentiate clearly, in the matter of treatment, between a State submitting to the jurisdiction and decisions of the court and a State repudiating them. It seems desirable to recommend that a State repudiating the jurisdiction or decision of the court be suspended from the enjoyment of the rights inherent to membership in the international organization.

9.- It seems desirable to recommend that the obligation of the council, in regard to the imposition of the jurisdiction and decisions of the court, be especially compelling in those cases in which the court has acted at the suggestion of the council.

10.- In the undertakings of submission to the jurisdiction of the court, implicitly expressed by the signature of the instrument constituting the court, any statement of reservation should be avoided as far as possible.

If this is unavoidable, such reservations should be limited to one or two general formulas. In this connection the following might be considered admissible:

a).- A reservation in reference to events which took place before a given date, as, for example, the beginning of hostilities or the signature of peace treaties; and

b).- A reservation in reference to relations with States which may be regarded as not submitting to the jurisdiction of the court.

11.- In regard to the law applicable, the provision of Article 38 of the statute of the Supreme International Court of Justice does not give occasion to any fundamental objection.

B) Advisory Opinions

12.- The court should be enabled to give advisory opinions in juridical questions or on juridical points or aspects of political questions.

13.- The following would have the right to petition such opinions:

a).- The Assembly;
b).- The Council;
c).- The International Organization; and
d).- The States in particular, by means of restrictions assuring the proper use of this right.

14.- The court would decide on its competence for giving an opinion, on the basis of the subject, of the person, or of the international body requesting it.

15.- On pertinent points arising in political conflicts, provision should be made to make obligatory the procedure of petitioning the opinion of the court. This requirement might perhaps be made effective by establishing that a qualified minority of the council would be enabled to call for the required petition.

16.- It seems advisable, in a general way, to extend the opportunity for petitioning and for giving advisory opinions in that sphere of action in which the judicial activity of the court is the smallest.

C) Complementary Duties

17.- The court shall have the following complementary duties:

a).- It should be a supreme court within the international administrative system. In this regard, it should have the power to settle conflicts of competence between international bodies and should be able to set itself up as a court of appeal for questions coming in first instance under the jurisdiction of other international administrative courts which may be created.

b).- It should be empowered to unify the interpretations given to international agreements by the different national or international courts. This power should be exercised only at the request of governments or representatives of international bodies.

D) Procedure

18.- The court should determine its own procedure, which might be similar to that of the permanent international court of justice.

19.- The decision should require a majority of five votes, that is, an absolute majority of the members of the court.

20.- The court should be considered as the successor of the Permanent Court of International Justice. In this regard, the signatory states of the agreement should indicate that all powers and duties granted by previous conventions to the Permanent Court of International Justice should be regarded as granted to the court which is to be created within the new organization.

Washington, April 9, 1945.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 51
DP/14
April 16, 1945

NOTE ON ARTICLE 9 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE AND THE POSITION OF THE MOSLEM LEGAL SYSTEM AND THE MOSLEM CIVILIZATION AMONG THE MAIN FORMS OF CIVILIZATIONS AND PRINCIPAL LEGAL SYSTEMS OF THE WORLD PRESENTED BY THE DELEGATIONS OF THE MOSLEM STATES OF THE NEAR EAST

(With French Translation)

I

1. The Moslem legal system is a system of unquestionable originality. Its autonomy is evident, as a legal system largely governed by the distinctive character of a social community very different from that in which other legal systems have reached normative maturity.

The International Congress on Comparative Law which was held at The Hague in 1932 decided that Moslem law is an entirely independent source of comparative law. In 1938 when the question of the relationship between Roman Law and Moslem Law was brought to the consideration of the Second Congress on Comparative Law, the Congress stated explicitly that Moslem Law was an autonomous legal system which did not depend on other established systems. The body of professors representing Egypt at that Congress had submitted to it a memorandum to illustrate this scientific as well as historical data by developing a descriptive research on the scope of the constitutive elements of the Moslem legal system and its creative evolution through the normative activities of its complementary sources.

The following is a summary of the theories developed in the above-mentioned note.

II

2. One must never confuse Moslem religion with Moslem Law. The first period of Islam had barely ended when the advance of the science of law, as well as the development of legal relations, helped dissociate the intricate elements which composed the general Moslem system; thus, the precepts of faith were isolated from legal rules. Faith, which is

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the subject of a separate science: Al Kalam is entirely distinct from: Al Fikh, or Law, which contains the precepts of conduct and actions. It is true that law evolved along the general lines of religion, but however great the influence of religion, law in the mind of all represented an autonomous discipline of a secular character, in its finality at least.

In order to clearly bring out this character one must distinguish between two periods in the function of Moslem Law; the first one is that in which formal sources of legal rules stem from the divine command, expressed directly in the Koran or indirectly in the tradition of the Prophet "Al sunnah". The second period is that of scientific development of Moslem Law through Cheria's two supplementary sources: The consensus on "Aligmaa" and the Analogy or "Al Quias".

3. It is incontestable that in the first period the Moslem legal system established by the Koran and "Al sunnah" had been formed independently of any outside influence of other legal systems. Its religious stamp as well as a generality of its principles have clearly distinguished it from all the other legal systems in force in the other countries during this same period. As for its religious stamp it was in the very nature of things. The Koran at first dealt with religion and morals, particularly in the first verses. Later one finds legal rules concerning not only man's actions either in the civil or penal field but also relations between nations. One finds standards on war, peace, family organization, property, obligations, crimes, repressive punishment, even on judicial procedure. All these rules are mingled with religious concepts which accounts for the religious or rather moral influence which characterizes Moslem Law. Moreover, this religious influence was justified in order to insure the prominence of moral principles which are recommended by religion and which in the final analysis must govern human nature. But this religious influence does not in any way affect the legal character of the rules of the Islamic Law, nor their intrinsic value, considered as a whole as a homogenous and coherent normative system. A large part of these legal rules established by the Koran and Sunnah have been enacted to abrogate or modify preislam customs, in other terms they constitute legal reforms realized by Islam to counterbalance general tendencies in preislamic law. This part was of purely arabic formation, while the other was in view of the changing needs of the Moslem community. Thus, Moslem legislation translates in a truly remarkable way all social transformations required by the development and progress of the Moslem community, welcoming certain preislamic institutions, correcting numerous points of the preexisting law and lastly, formulating new principles in consideration of the needs and aspirations of islamic society.

4. In the second period of the evolution of Moslem Law, after the Prophet's death, the divine sources cease to inspire the legal system of Islam, but a purely scientific work continued to fill the gaps of the Moslem legal order and to insure the development of law and its adaptation to social needs through two supplementary sources, the Consensus and the Analogy. These two purely secular sources have enabled Moslem jurists to introduce in the legal system a progressive element of considerable importance; it is through these sources that doctrine and jurisprudence have shown a truly remarkable creative activity and have thus formulated a rather important part of the islamic legal system.

It is, however, to be noted that the normative activity expressed by the supplementary sources was not of a nature to prepare the Moslem legal system to absorb, at least without restraint, the foreign institutions or civilizations. A certain number of these have crept into the Moslem Law, through the channels of one or the other of the complementary sources; even then, such institutions have not retained their individuality. They blend themselves in the Moslem legal system and lose their own physiognomy to follow exactly the pattern of Moslem technique.

5. In the field of historical and rational data as well, there is no doubt that the Moslem Law is an autonomous legal system. Furthermore, the technical structure of Moslem Law brings forth the fundamental differences which place the Moslem system in a class apart from other legal systems. Let us not go further without noting that the legal technique of Moslem public law is thoroughly different from that of European or American institutions pertaining to State organization and to international or domestic relations. In this respect, one has never doubted the originality of this legal system. In fact the Moslem rules concerning the domestic and international activities of the State present no similarity whatsoever to those belonging to codes of Occidental Law. A mere perusal of the Moslem rules dealing with peace, war, or international world organization will suffice to convince that public law, be it domestic or international, enjoys among Moslem peoples a certain autonomy, characteristic phenomenom of Moslem civilization. To quote only one of the most typical examples, one can consider the Moslem conception of unitarian State, this very conception which accounts for the existence of the Moslem world "Dar El Islam" as a political entity, which tends to insure an international organization of a _sui generis_ nature.

6. The Moslem Law, public as well as private, is based on a highly developed and powerful moralizing concept which pervades the entire Moslem system. It is true that any legal system which has reached a certain degree of evolution contains a moral element. The moralizing concept of the Moslem system, however, is not the result of a slow evolution, it was born with the fundamental principles of the legal order and this constitutes an integral part of it. One can therefore say that it has not assumed a subsidiary character and that it has steadily retained its vigor during the evolution of the legal system. This moralizing tendency which pervades the entire Moslem legal system and which is explained by its relation to religion, has enabled the Moslem jurists to elaborate several important theories, such as that pertaining to the abuse of Law as based on the adage "Hadis" of the Prophet asserting that "no one has the right to harm his neighbor" and the theory of imprevision conceived on the provisions of the Koran stating that "no one is held to the impossible". Another Koranic text prohibiting all unjust acquisitions contains the seed of a range of theories of public and private law which are extremely flexible and evolutive. Subjective law, a justly recognized prerogative of the free individual, is respected by Moslem Law to the extent of being considered as imprescriptible. There again can be felt the moralizing tendency of Law throughout Islam. Should we confine ourselves to ethics, we could not pretend to destroy the rights of the individual for the simple reason that he has not availed himself of or exercised them for a certain period of time. But legal proceedings can be prescribed; and in this way, Moslem jurists are able to conciliate exalted moral principles and the imperious needs of practical life by an original conception tending to separate right from legal proceedings; legal proceedings present themselves from the angle of Moslem legal technique as a protective measure independent in its existence, of the right, the defense of which it insures.

Such a powerful moralizing conception will contribute to mitigate the rigor of legal rules; such a system will serve as a regulator capable of furnishing in the settlement of international conflicts theories extremely flexible and evolutive.

III

7. Article 9 of the Statute of the Permanent Court of International Justice states:

> "At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the

> qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world."

The originators of the Statute, in the drafting of this article, must certainly have envisaged, among others, the Arabic civilization and the legal system of Islam.

Accordingly, the government of Near Eastern Moslem States, in letters addressed in September, 1939, to the Secretary General of the League of Nations, pointed out that"the fact cannot be disputed that Moslem civilization, owing to its glorious past as well as to its present effulgence, constitutes one of the main forms of civilization.

"On the other hand, Moslem Law, governing as it does an important part of the peoples of the world, is an autonomous legal system boasting its own sources, structure and conceptions."

* * *

NOTE SUR L'ARTICLE 9 DU STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE ET LA POSITION DU SYSTEME JURIDIQUE MUSULMAN ET DE LA CIVILISATION MUSULMANE PARMI LES GRANDES FORMES DE CIVILISATIONS ET LES PRINCIPAUX SYSTEMES JURIDIQUES DU MONDE PRESENTEE PAR LA DELEGATIONS DES ETATS ISLAMIQUES DU MOYEN ORIENT

I

1. Le système juridique musulman est un système dont l'originalité n'est pas douteuse. Son autonomie est évidente en tant que système juridique principalement commandé par le génie propre d'une communauté sociale bien distincte de celles au sein des quelles d'autres sytèmes juridiques ont atteint leur maturité normative.

Dans un congrès international, celui de Droit Comparé qui s'est tenu à La Haye en 1932, le congrès a décidé que le droit musulman est une source de droit comparé tout à fait indépendante. En 1938, lorsque au sein du second Congrès de Droit Comparé le question de la relation entre le Droit Romain at le Droit Musulman a été étudiée, le dit congrès s'est prononcé catégoriquement dans ce sens que le droit musulman est un système juridique autonome ne dépendant pas d'autres systèmes connus. Le collège des professeurs qui représentait l'Egypte au dit Congrès lui avait présenté une note aux fins d'illustrer cette donnée à la fois scientifique et historique, en développant une étude descriptive du champ d'activité des éléments dont se composait le système musulman et de l'évolution créatrice du système juridique musulman à travers l'activité normative de ses sources complémentaires.

Nous ne trouvons mieux que de donner un résumé de la dite note en ce qui suit.

II

2. Il ne faut jamais confondre la religion musulmane et le droit musulman. A peine écoulée la première période de l'Islam, le progrès de la science du droit ainsi que le développement des rapports juridiques ont contribué à dissocier les éléments entremêlés dont se composait le système général musulman: ainsi les préceptes de la foi furent isolés des règles juridiques. La foi, qui fait l'objet d'une science à part: "Al Kalam", est tout à fait distincte de la science du droit: "Al Fikh", ou le Droit, qui contient les préceptes de la conduite ou des actes. Il est vrai que le Droit évoluait dans le cadre général tracé par la religion, mais quelle que fut l'influence de celle-ci, le Droit constituait, dans l'esprit de tous, une discipline autonome, offrant un caractère séculier, du moins quant à sa finalité.

Pour bien mettre ce caractère en relief, il faut distinguer entre deux époques dans la fonction du droit musulman; la première est celle où les sources formelles des règles juridiques se ramènent à l'impératif divin exprimé directement par le Koran ou indirectement par la tradition du Prophète "Al Sunnah". Le seconde période, c'est l'époque de l'élaboration scientifique du droit musulman à l'aide de deux sources complémentaires de Chéria: le concensus ou "Al Igmaa" et l'analogie ou "Al Quias".

3. Il est incontestable que, dans la première période le système juridique musulman érigé par le Koran et le Sunnah a été formé à l'écart d'une influence quelconque d'autres systèmes juridiques. Son empreinte religieuse, ainsi que la généralité de ses principes l'ont nettement distingué de tous les autres systèmes juridiques en vigueur dans les autres pays pendant cette même période.

Quant à l'empreinte religieuse, c'était la nature même des choses; le Koran s'était occupé en premier lieu de la religion et de la moralité, spécialement dans les premiers versets. Plus tard, on y trouve des règles juridiques concernant non seulement les actes de l'homme, soit au domaine civil ou pénal, mais egalement les relations entre les nations. On y trouve des normes concernant la guerre et la paix, l'organisation de la famille, les biens, les obligations, les crimes et les peines répressives, et même la procédure judiciaire. Toutes ces règles sont mêlées aux préceptes de la religion et de là provient l'empreinte religieuse ou plutôt morale qui caractérise le droit musulman. Cette empreinte religieuse est d'ailleurs justifiée pour assurer la prééminence des principes moraux recommandés par la religion et qui doivent, en dernière analyse, gouverner l'action humaine. Mais cette empreinte religieuse n'affecte en rien le caractère juridique des règles de droit islamique, ni leur valeur intrinsèque, envisagés dans leur ensemble comme un système normatif homogène et cohérent. Une bonne part des règles juridiques élaborées par le Koran et la Sunnah ont été édictées en vue d'abroger ou de modifier les coutumes préislamiques; en d'autres termes, elles constituent des réformes juridiques réalisées par l'Islam pour réagir contre les tendances générales du droit préislamique. Cette partie était d'une formation purement arabe, tandis qu'une autre partie était formée en considération des exigences progressives de la communauté musulmane. De cette façon, la législation musulmane traduit d'une façon singulièrement remarquable toutes les transformations sociales commandées par le développement et le progrès de la communauté musulmane, accueillant certaines institutions préislamiques, corrigeant en nombre de points le droit préexistant et enfin élaborant des principes nouveaux en considération des exigences et des aspirations de la société islamique.

4. Dans la seconde période d'évolution du droit musulman, après la mort du Prophète, les sources divines ont cessé d'alimenter le système juridique de l'Islam, mais une oeuvre purement scientifique continuait à combler les lacunes de l'ordre juridique musulman et à assurer le développement du droit et son adaptation aux besoins sociaux par le moyen de deux sources complémentaires, le consensus et l'analogie. Ces deux sources purement séculières ont permis aux juristes musulmans d'introduire dans le système juridique un élément progressif très considérable; c'est à travers ces deux sources que la doctrine et la jurisprudence ont déployé une activité créatrice des plus remarquables et ont, par là même élaboré une partie assez importante du système juridique islamique.

Mais il faut remarquer que l'activité normative exprimée par les sources complémentaires n'était pas de nature à apprêter le système juridique musulman à s'alimenter, au moins librement, des institutions ou civilisations des autres pays. Même dans le cas où une institution donnée se glisse dans le droit musulman à travers l'une ou l'autre des sources complémentaires, cette institution ne conserve pas sa propre individualité. Elle s'incorpore dans le système juridique musulman et perd sa propre physionomie pour pouvoir être parfaitement moulée sur la technique musulmane.

5. Aussi sur le terrain de données historiques et rationnelles, il n'y a aucun doute que le droit musulman est un système juridique autonome. Au surplus, la structure technique du droit musulman fait ressortir les différences fondamentales qui séparent le système musulman d'autres systèmes juridiques. Notons tout de suite que la technique juridique de droit public musulman est profondément différente de celle des institutions européennes ou américaines relatives à l'organisation de l'état, à ses rapports avec les autres états et avec les particuliers. A cet égard, l'originalité de ce système juridique n'a jamais été mise en doute. En réalité, les règles musulmanes concernant l'activité interne et internationale de l'Etat n'offrent aucune ressemblance avec celles du droit occidental. Il suffit de passer en revue les règles musulmanes ayant trait à la paix, à la guerre, à l'organisation internationale du monde pour avoir la conviction que le droit public, soit interne ou international, jouit chez les musulmans d'une certaine autonomie, phénomène particulier de la civilisation musulmane. Pour n'en citer qu'un exemple des plus caractéristiques, on peut signaler la conception musulmane de l'état unitaire, cette conception qui fait du monde musulman "Dar El Islam" une entité politique tendant

à assurer une organisation internationale d'un caractère "sui generis".

6. Le Droit musulman, tant public que privé, est basé sur une conception moralisatrice très développée et puissante qui domine tout le système musulman. Il est vrai que tout système juridique ayant atteint un certain degré d'évolution renferme un élément moral. Toutefois la conception moralisatrice du système musulman n'a pas été le résultat d'une évolution lente, elle est née avec les principes fondamentaux de l'ordre juridique et constitue ainsi une partie intégrante de son corps. Aussi remarque-t'on qu'elle n'a pas revêtu un caractère subsidiaire et qu'elle a continué à garder sa vigueur au cours du développement du système juridique. Cette tendance moralisatrice qui domine tout le système juridique musulman et qui s'explique par le rapport qui le relie à la religion, a permis aux juristes musulmans d'élaborer plusieurs théories importantes, telle que celle de l'abus du droit basée sur l'adage "Hadis" du Prophète qui dispose que "Nul n'est admis à nuire à autrui" et la théorie de l'imprévision conçue sur la disposition koranique qui stipule que "Nul n'est tenu à faire ce qui dépasse ses propres forces". Un autre texte du Koran qui prohibe toute acquisition injuste contient en germe une gamme de théories du droit public et privé qui sont extrêmement souples et facilement évolutives. Le droit subjectif, prérogatif légitimement reconnu à l'individu libre, est respecté par le droit musulman jusqu'au point de le considérer imprescriptible. Là encore se trouve la trace de la tendance moralisatrice du droit dans l'Islam. Si on s'en tient à la morale, on ne saurait admettre l'idée d'anéantir le droit d'un individu par le seul fait qu'il ne l'a pas réclamé ou exercé pendant un certain laps de temps. Mais le moyen de protéger le droit, l'action en justice, peut se prescrire et de cette façon les juristes musulmans parviennent à concilier l'exaltation des principes moraux avec les besoins impérieux de la vie pratique par une conception originale tendant à séparer le droit de l'action en justice; l'action en justice se présente sous l'angle de la technique juridique musulmane comme une mesure de protection indépendante, dans son existence, du droit dont elle assure la défense.

Une conception moralisatrice aussi puissante contribuera à mitiger la rigueur des règles juridiques;un pareil système servira comme régulateur capable de fournir dans la solution des conflits internationaux des théories extrêmement souples et facilement évolutives.

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III

7. Or l'article 9 du Statut de la Cour permanente de Justice internationale dispose que:

> "Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent, dans l'ensemble, la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde."

Les redacteurs du Statut, en rédigeant cet article, avaient certainement dû envisager entre autres la civilisation islamique et le système juridique de l'Islam.

C'est dans ce sens que, dans des lettres adressées au Secrétaire Général de la Société des Nations en Septembre 1939, les Gouvernements des Etats islamiques du Moyen Orient ont relevé qu' "on ne peut contester que la civilisation islamique, tant par son glorieux passé que par son rayonnement actuel, constitue l'une des grandes formes de civilisation.

"D'autre part, le droit musulman, qui régit une important part de la population du globe, est un système juridique autonome avec ses sources propres, sa structure et ses conceptions particulières."

DOCUMENTATION AND REPORTS
DOCUMENTATION ET RAPPORTS

Jurists 1
G-1
April 4, 1945

THE UNITED NATIONS COMMITTEE OF JURISTS

Official Comments Relating to the Statute of the Proposed International Court of Justice

Membership in the Court (No comparable Article in the Statute of the P.C.I.J. See Art. XIV of the Covenant of the League and paragraphs 2 and 4 of Assembly Resolution of Dec. 13, 1920)

1. Chapter VII of the Dumbarton Oaks Proposals provides:

> "4. All members of the Organization should *ipso facto* be parties to the statute of the international court of justice.
>
> "5. Conditions under which states not members of the Organization may become parties to the statute of the international court of justice should be determined in each case by the General Assembly upon recommendation of the Security Council."

2. The Informal Inter-Allied Committee recommends:

> "136. It should be open to all States, whether or not members of the future General International Organisation, to become parties to the Statute of the Court; but no country should be permitted to have recourse to the Court which is not a party to its Statute. (paragraph 54)" [1]

3. The

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[1] The quoted passages from the Informal Inter-Allied Committee are taken from the "Summary of Recommendations and Conclusions", comprising Chapter XII of the Report. Paragraph references at end of quotations refer back to the full discussion in the main part of the Report.

3. The Inter-American Juridical Committee states:

"Provision is made in No. 5 [Ch. VII, Dumbarton Oaks Proposals] that states not members of the Organization may under certain conditions become parties to the statute of the court. This provision requires clarification. Membership in the Organization is to be open to all 'peace-loving states'. Is it contemplated that a peace-loving state which, for reasons of its own, might choose to remain outside the Organization, might nevertheless be permitted to become a party to the statute of the court? Or is the reference to former enemy states, which the Security Council might not be willing to admit to membership in the Organization yet might be willing to permit to become parties to the statute of the court?"

4. Brazil

"Consistent with its suggestion in regard to making the system universal, the Delegation of Brazil points out that in the event of acceptance of that suggestion item No. 5 of this Chapter [Ch. VII, Dumbarton Oaks Proposals] must be eliminated." (Brazil, memorandum presented to Inter-American Conference)

5. Mexico

"There is no remark to be made about Article IV [par. 4, Ch. VII, Dumbarton Oaks Proposals. See above, this heading] which contains a very wise precept.

"The possibility examined in Article V [par. 5, Dumbarton Oaks Proposals] would not arise, according to the procedure of compulsory universal membership supported in the Mexican Proposals." (Mexico, memorandum of Oct. 31, 1944, p. 72)

6. Venezuela

6. Venezuela

"If universality is a desideratum for any institution of an international character, in none does it make itself felt with greater force than in the Permanent Court of Justice. This seems to be understood in the Dumbarton Oaks draft when it establishes that "the conditions on which States which are not members of the Organization could become parties in the Statute of the International Court of Justice, should be determined in each case by the General Assembly, according to recommendation of the Security Council'."

"It is considered that the prior recommendation of the Council as a prerequisite in this question might hinder new adherences to the Statute of the Court, for which reason it would be proper to establish that the General Assembly determine in each case the conditions on which States which are not members of the Organization could become parties to the Statute of the International Court of Justice." (Venezuela, memorandum, Nov. 31, 1944)

"The members of the international organization would, for all purposes, be members of the Court. The States which are not members of the organization would also not be members of the court, in that they would not participate in its organization or in the designation of its membership; provided, however, that they should have some relation with the said entity, so as to submit themselves to, or fall under, its jurisdiction." (Venezuela, memorandum presented to Inter-American Conference)

CHAPTER I

CHAPTER I

ORGANIZATION OF THE COURT

Connection with International Organization (Art. 1, Statute of the P.C.I.J.)

1. Chapter VII of the Dumbarton Oaks Proposals provides:

> "2. The court should be constituted and should function in accordance with a statute which should be annexed to and be a part of the Charter of the Organization."

2. The Informal Inter-Allied Committee recommends:

> "116. The existing connexion between the Court and the League of Nations should be discontinued and should not, for the present at any rate, be replaced by an organic[1] [1 By organic connexion is meant that the Court was established by one of the articles of the League Covenant, that its judges were elected by the Assembly and Council of the League and that its expenses were a charge on the budget of the League, &c.] connection with any new International Organisation. This need not exclude all connexion between the Court and the International Organisation. The Court would be part of the machinery at the disposal of the Organisation; and the constitution of the Organisation might lay down the conditions in which its members would be bound to have recourse to the Court, and provide measures for ensuring that the decisions of the Court were complied with. A connexion of this character would not be created by the Statute of the Court, but by the constitution of the Organisation. (paragraphs 12-20)"

3. The Inter-American Juridical Committee notes that:

> "The Protocol ... could without difficulty be incorporated in the charter of the new Organization, in accordance with the terms of No. 2."

4. Cuba

4. Cuba

"The ... statute ... shall be annexed to this Charter and shall be considered as part of it." (Cuba, memorandum presented to Inter-American Conference)

5. Dominican Republic

"It should be directed that the statute of the International Court of Justice be incorporated with the Charter of the General Organization which is planned." (Dominican Republic, memorandum presented to Inter-American Conference)

6. Guatemala

"The International Court of Justice ... acting in complete independence in relation to the Community ..." (Guatemala, memorandum of Nov. 14, 1944; memorandum presented to the Inter-American Conference).

7. Mexico proposes:

"Elimination of the International Court of Justice from the number of principal organs of the Organization.

"The Permanent Court of International Justice, although connected with the League of Nations, was, like the International Labor Organization, considered an 'autonomous organization'. The tendencies that have been manifested among specialists who have recently been studying the amendments that it would be advisable to make in the Statute of the Court in order to accentuate such autonomy are pulling in a diametrically opposite direction from that of the Dumbarton Oaks Proposals. It is this criterion which inspires the conclusions that have been reached in this respect by the group of eminent jurists who constitute the 'Informal Inter-Allied Committee on the Future

of

of the Permanent Court of International Justice' ..."[The memorandum here quotes the relevant portions of the Report of the Inter-Allied Informal Committee]

"The objections set forth in the text of Chapter III of the Report of the Informal Inter-Allied Committee, which has just been transcribed, are valid in their entirety for an international Organization such as that proposed at Dumbarton Oaks, in respect to free entry and withdrawal in the manner of the League of Nations. But even in the case of an Organization of obligatory universal membership, such as that recommended in the Mexican Proposals, it is considered advisable that the Permanent Court of International Justice should not be included among the organs of the future General International Organization, but that it should enjoy full autonomy, - even though, of course, there ought to exist certain relations between the Court and the Organization, like those referred to in Article 17 of the Report reproduced above - inasmuch as, like the juridical institution that it is, the Court will need to maintain, to the highest degree possible, independence in the exercise of its functions, upon which independence will principally depend its prestige and moral authority, for which reason it will gain much by being free from any repercussions, either direct or indirect, of the contingencies to which a predominantly political organization is exposed, and as the General International Organization that is created will necessarily be." (Mexico, memorandum of Oct. 31, 1944, pp. 34-37)

8. Norway, referring to par. 2 of the Dumbarton Oaks Proposals, (see "1", ante this heading) states, -

"It proposes that membership of the Organization should imply automatic adherence to the Statute of the Court. We are in agreement with this principle." (Norway, memorandum of March 2, 1945)

9. Paraguay

> "In the judgment of this Chancellery it is preferable that it should be independent, without prejudice to the connections which must exist and to the execution of the sentences of the court which is the function of the Council." (Paraguay, memorandum of Feb. 17, 1945)

10. Venezuela

> "1. The court should be the essential integrating element of the international organization.
>
> . . . .
>
> "4. The statute of the court should be approved and ratified together with the general agreement for the establishment of the organization, and as an instrument complementary to it." (Venezuela, memorandum presented to the Inter-American Conference)

New or Revised Statute (Art. 1, Statute of P.C.I.J.)

1. Chapter VII of the Dumbarton Oaks Proposals provides that,

> "3. The statute of the court of international justice should be either (a) the Statute of the Permanent Court of International Justice, continued in force with such modifications as may be desirable or (b) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis."

2. The Informal Inter-Allied Committee recommends:

> "113. In general the Statute of the Court has worked well and should be retained as the general structure of the future Court. ...

"115.

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. . . .

"115. On the assumption that an International Court in some form will be required after the war, it will not be sufficient to rely on the automatic continuance and functioning of the existing Permanent Court of International Justice. A new international agreement will be needed, whether the object be to set up a new Permanent Court or merely to continue the old one in existence (paragraphs 8-11)."

[In its main discussion of this point (paragraphs 8-11), the Committee considers particularly the impossibility of holding a new election under the present Statute, since this requires the participation of the League Council and the Assembly. Since no provision for amendment is included in the statute, it is considered that a new international agreement is necessary.]

3. The Inter-American Juridical Committee states:

"The Juridical Committee, in accordance with the conclusions reached in its Preliminary Recommendation, would suggest that the existing Permanent Court of International Justice should be named as the Court. The Protocol to which the Statute of th Permanent Court of International Justice is attached is an independent treaty, and it could without difficulty be incorporated in the Charter of the new Organization, in accordance with the terms of No. 2. A large number of treaties relate directly to the existing Court, and it is desirable that they should not be automatically annulled. Doubtless it was the intention of the framers of the Proposals that there should be a legal succession from the existing Court to the new court; but apart from the practical convenience of juridical continuity, it is only a proper recognition of merit that the existing Court, which has rendered such valuable service to the international community, should be

named

named as the Court, with provision for such changes in its Statute as may be found necessary and proper, in accordance with the provisions of No. 3, (a)."

4. Bolivia

"The International Court of Justice should be strengthened by appropriate changes in its statute . . ." (Bolivia, memorandum presented to the Inter-American Conference).

5. Chile

"The Government of Chile favors maintaining the present Court of International Justice, with the necessary amendments to its Statute." (Chile, memorandum presented to the Inter-American Conference.)

6. Cuba

"Article 1. . . . The Permanent Court of International Justice will continue to function in accordance with the provisions and amendments set forth below". (Cuba, draft statute, presented to the Inter-American Conference.)

7. Guatemala

"It is, of course, acceptable that the statutes of the new court should be inspired by those of the present Court of The Hague." (Guatemala, memorandum of November 14, 1944; memorandum presented to Inter-American Conference.)

8. Honduras

"Honduras gives its full support to the establishment of an International Court of Justice, mentioned in Chapter VII of the Proposals, on the basis of the Statute of the Permanent Court of International Justice." (Honduras, memorandum presented to the Inter-American Conference.)

9. Mexico

9. Mexico

"The continuance of the Permanent Court of International Justice is agreed upon and in its Statute shall be made the modifications which the Assembly may deem appropriate for the best discharge of its functions." (Draft Article in Mexican memorandum of October 31, 1944.)

10. The Netherlands Government state that:

"They welcome the proposals contained in the Plan for such a Court, in particular in so far as they envisage the continuation, after the necessary readjustments, of the existing Permanent Court of International Justice." (Netherlands, memorandum of January 1945.)

11. The Norwegian Government state that:

"We feel that for many reasons the continuity of the court ought to be preserved." (Norway, memorandum enclosed with despatch of March 2, 1945.)

12. Panama

"As a practical measure, Panama suggests that this Court might be constituted in accordance with the Statute of the Permanent Court of International Justice, as the basis, such amendments as may be deemed advisable and appropriate to be made in the said Statute." (Panama, memorandum presented to the Inter-American Conference.)

13. Venezuela, referring to paragraph 3, states that:

"The first solution is considered more practical and efficient.

"The mechanism of the present Court is on the whole excellent, and it would be sufficient to make some changes in it such as reduction of the number of judges. . ." (Venezuela, memorandum of October 31, 1944.)

"The

"The statute of the court should be substantially the same as that of the permanent court of international justice, with the changes required by the new international conditions." (Venezuela, memorandum presented to the Inter-American Conference.)

Qualifications of Judges (Article 2, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee would make no change in the present Statute regarding the qualifications of judges. It considers that a balance should be maintained between those judges who have had previous judicial experience, and those with a specialized knowledge of international law and thinks there has been a tendency to under-represent the former category in the past. However it thinks that this problem cannot be satisfactorily dealt with in the Statute of the Court. (Paragraphs 21, 117)

2. Cuba

"Article 2. The Permanent Court of International Justice is an independent body of magistrates selected from among persons who enjoy the highest moral reputation and who fill the requirements established in their respective countries for the highest judicial offices, or who are jurists known to be fully qualified in International Law." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

"The candidates . . . shall be elected on the exclusive basis of their technical qualification and personal reputation." (Venezuela, memorandum presented to the Inter-American Conference.)

Independence of Judges (Article 2, Statute of the P.C.I.J.)

1. Cuba

"Article 2. The Permanent Court of International Justice is an independent body of

magistrates

magistrates . . . (Cuba, draft statute presented to the Inter-American Conference.)

2. Honduras

"... it being necessary to guarantee, in the most absolute manner, the independence of the judges, their freedom of action and opinion . . ." (Honduras, memorandum presented to the Inter-American Conference.)

3. Netherlands

"Every possible safeguard should be inserted in the statute to ensure as far as possible that the judges composing the Court not only are--, but will also be recognized as being impartial and independent." (Netherlands, memorandum of January 1945.)

Number of Judges (Article 3, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"123. The present number of fifteen judges is too high to be conducive to the satisfactory working of the Court and should be reduced to nine, exclusive of *ad hoc* Judges. . ." (Paragraphs 29-32)

2. Cuba

"Article 3. The Court shall be composed of two Divisions, each with nine Judges. . ." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

"It would be desirable to cut the number of active members of the court to nine . . ." (Venezuela, memorandum presented to the Inter-American Conference.)

Nomination of Judges (Articles 4-8, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee proposes:

"129. The existing system of nomination of candidates by the national groups in the Permanent Court of Arbitration should be replaced by a system of direct nomination by Governments." (paragraph 45.)

"130. Each of the Governments concerned should nominate one candidate only, who should be one of its nationals." (paragraph 46.)

"131. The provisions of Article 6 of the Statute recommending Governments to consult the appropriate judicial, legal and academic authorities in their respective countries before making nominations should be retained as a recommendation." (paragraph 47.)

2. Cuba

"Article 11. . . . The President of the Supreme Court of each of the member States shall prepare a list of nine Judges for the Division to which they belong and shall send it, in a closed envelope, to the President of the Supreme Court of the State in which that Division shall be located.

"The Presidents of the Supreme Court of The Hague and of Habana shall also prepare their lists, which they shall keep in their possession in a closed and sealed envelope.

"In each list, not more than one candidate with the same nationality as that of the person preparing it may appear." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

"(1) The government of each member state of the organization shall appoint two representatives. The governments should be urged to appoint jurists with technical qualifications and recognized reputations, and, in making such appointments, to hear the opinion of the law schools, of the highest courts, and, in general, of the representative organizations of the national juridic science.

"(2) The representatives appointed by the governments shall constitute an international electoral college; their term of office shall be nine years; and they shall function in the college in accordance with their free individual opinions.

"(3) The electoral college referred to shall name five candidates for each vacancy for the office of judge which is to be filled. These candidates shall be appointed by a majority of votes, for which purpose each representative shall cast one vote. When it is necessary to fill a vacancy caused by the completion of the term of a judge, the college shall place the name of the outgoing judge at the top of the above-mentioned list. The ballots of the representatives may be cast in person or by mail, and the Secretariat of the Court shall act as the Secretariat of the college." (Venezuela, memorandum presented to the Inter-American Conference.)

Election of Judges (Articles 8, 10-12, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"132. The method of double election of Judges by the Assembly and Council of the League should be discontinued and replaced by direct election by the Governments from among the corpus of candidates nominated." (paragraphs 48 and 49)

"133. Unless it proved possible to combine

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the elections with meetings of the Assembly of the future General International Organisation, special meetings of the Governments would have to be held every three years. The inconvenience of so frequent meetings might be reduced by conducting the first ballot in writing, each Government sending its vote to an agreed headquarters Government. In that case subsequent ballots might be conducted by the diplomatic representatives of the Governments concerned at some convenient capital (e.g., the seat of the Court), assisted if desired by an ad hoc representative of any Government wishing to send one. (paragraphs 50 and 51.)

"134. In the event of the subsequent establishment of an organic connexion between the Court and the future Political Organisation, the task of election could then be transferred to the appropriate organisation of the latter body. (paragraph 52.)

"135. Judges should as at present, be elected by an absolute majority of the votes cast." (paragraph 53.)

2. Cuba (see Cuban proposals for nomination, above):

"Article 13. When the election day arrives, the Chief Justice of the respective Supreme Court shall proceed to open and read the lists in a public session.

"Article 14. The Chief Justice shall declare elected the nine candidates who obtain the greatest number of votes, subject to the rules set forth below.

. . . .

"Article 16. In case of equal votes for other posts of Judges on the Court, all shall be considered elected if they have received more votes

than

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than the others. When in this case it is a question of filling a single post, the matter shall be decided by the parties." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela (see Venezuelan proposals for nomination, above)

"The general assembly shall appoint a regular judge and two alternates, from the list of five candidates submitted to it by the college." (Venezuela, memorandum presented to the Inter-American Conference.)

Judges of Same Nationality (Art. 10, Statute of the P.C.I.J.)

1. Cuba

"Article 15. Only one national of each State subject to the jurisdiction of the Division may be admitted to this Division. If two or more from one State have obtained an equal number of votes, the incumbent shall be selected by lot." (Cuba, draft statute presented to the Inter-American Conference.)

2. Venezuela

"The court may not have more than two judges with the same nationality." (Venezuela, memorandum presented to the Inter-American Conference.)

Representation of Legal Systems (Art. 9, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"120. Any specific attempt, such as that made in Article 9 of the Statute, to secure the representation of particular legal systems, as such, should be abandoned. On the other hand, there is great value in the representation among the Judges of the Court of different types of

mind

mind and methods of legal thought, and this would indirectly have the consequence that certain countries would habitually be represented. If the principle of selecting the best available candidates is acted on, it will almost inevitably result that different schools of thought would in practice find representation, and no special steps to secure this end would be necessary." (paragraphs 23 and 24.)

2. Cuba (see Cuban proposals for nomination, above)

"Article 11. In each list, not more than one candidate with the same nationality as that of the person preparing it may appear." (Cuba, draft statute presented to the Inter-American Conference.)

3. Guatemala

"It appears very much to be recommended that in the election of the judges there be included jurists who represent all the systems of world juridical thought in order that the functioning of the tribunal may harmonize with the juridical idiosyncrasies of any litigant." (Guatemala, memorandum of November 14, 1944.)

Term of Judges (Art. 13, Statute of the P.C.I.J.)

Filling of unexpired terms (Art. 15, Statute of the P.C.I.J.)

Retirement in Rotation (No article in Statute of the P.C.I.J.)

The Informal Inter-Allied Committee recommends:

"124. The present system of electing the Judges for a period of nine years is satisfactory and should be continued. (paragraphs 33 and 34.)

"125. On the other hand, it is undesirable to continue the existing system of whereby the entire Court goes out of office every nine years. This should be replaced by a system under which

one-third

one-third of the Judges would go out of office every three years, when an election would be held to fill these vacancies. In order to get this system working, special arrangements would be necessary during the first years after its adoption. Any Judge elected to fill an interim vacancy caused by the death or retirement of a Judge would serve only for the remainder of his predecessor's term of office. All Judges should, as at present, be eligible for re-election." (paragraph 35.)

Age Limit (No article in Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee states:

"126. There should be no age limit at which Judges should be called on to retire. If, however, an age limit were adopted it should not be fixed too low. Seventy-two would be a minimum, and seventy-five probably preferable." (paragraphs 36 and 37.)

Dismissal of Judges (Art. 18, Statute of the P.C.I.J.)

1. Cuba

"Article 20. The Judges of a Division may not be dismissed from their offices except by a resolution adopted unanimously on good grounds by the other Judges of the same Division." (Cuba, draft statute presented to the Inter-American Conference.)

Oath of Office

1. Cuba

"Article 18. The elected Judges, on their installation, shall promise to discharge their duties faithfully and loyally. If any of the Judges should not be present on the first day of the installation of the Division, he shall do it before the President of the Division." (Cuba, draft statute presented to the Inter-American Conference.)

Officers of the Court (Art. 21, Statute of the P.C.I.J.)

1, Cuba

"Article 21. Each Division shall elect its President and Vice President for terms of nine years, and shall fill these offices in the event of a vacancy.

"Article 22. Each Division shall also name its Secretary and, upon the proposal of the latter, the personnel of the Secretariat." (Cuba, draft statute presented to the Inter-American Conference.)

Seat of the Court (Art. 22, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends that:

"114. . . . the . . . seat of the Court should be retained." (paragraphs 6 and 7.)

2. Cuba

"Article 4. One of the Divisions shall ordinarily be located at The Hague, Netherlands, and the other in Habana, Cuba." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

". . . It seems desirable to recommend that the court have its seat in a territory other than that where the political bodies of the organization meet regularly--the seat might continue to be at The Hague." (Venezuela, memorandum presented to the Inter-American Conference.)

Sessions of Court: Vacations (Art. 23, Statute of the P.C.I.J.)

1. Cuba

1. Cuba

> "Article 23. The Division shall be continuously in session, except during judicial recess periods, which shall be during the summer and shall last three months." (Cuba, draft statute presented to the Inter-American Conference.)

Disqualification of Judges (Art. 24, Statute of the P.C.I.J.)

1. Cuba

> "Article 24. When a Judge feels that he should not sit in a case, he shall notify the President, in order that the latter may decide. The latter may, in turn, decide that a Judge shall not sit in a case, and he may take this decision on his own initiative or at the request of any of the parties." (Cuba, draft statute presented to the Inter-American Conference.)

Quorum (Art. 25, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee, after proposing that the number of judges be reduced to nine, recommends that "The quorum should be seven." (paragraphs 29-32.)

2. The Cuban draft, which provides for nine judges in each division, provides further that:

> "Article 3. Five Judges shall constitute a quorum." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

> "It would be desirable to cut the number of active members of the court to nine, and to establish a quorum of seven members for its operation." (Venezuela, memorandum presented to the Inter-American Conference.)

Chambers

Chambers (Arts. 26-29, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee refrained from making a recommendation as to Chambers. However, two tentative proposals were advanced which represent the views of some of the members of the Committee:

> "(1) that the court consist of three equal chambers selected from the Members provided by the plan for nominations advanced in the same report. (See above, "Nomination of Judges.) One chamber would sit at The Hague, and the other two outside Europe. Provision is made for the interchange of judges, but the decisions of each chamber would be final. The report also sets forth criticism of the plan, mainly that it encourages regionalism at the expense of uniformity and continuity of jurisprudence and unity and cohesion within the court. (pars. 97-110)
>
> "(2) that regional courts be established for particular cases, and that they be composed of the national judges of each of the parties, of two '*juges suppléants*' belonging to the particular region, chosen from the members of the Court by the various governments; and of five of the permanent judges of the Court, including the President and Vice-President." (pars. 111-112)

2. Cuba

> "*Article* 3. The Court shall be composed of two Divisions, each with nine judges. . . .
>
> "*Article* 4. One of the Divisions shall ordinarily be located at The Hague, Netherlands, and the other in Habana, Cuba. Each one of the Divisions may be in session even though the other is not.
>
> "*Article* 5. The Division at The Hague will try cases arising between States in Europe, Asia, Africa and Oceania.

"Article 6.

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"Article 6. The Division at Habana will try cases arising between American States.

"Article 7. When American States and States of other Continents are involved in a case, a third Division shall be established to hear it or to settle it, composed of four Judges appointed by the Division at The Hague, and four more appointed by the Division at Habana, and a President appointed in accordance with Article 8.

"Article 8. The third Division shall be presided over by the President of one of the other Divisions, chosen by lot at the time of the first case which may come up, and in succeeding cases the Presidents shall be rotated. . . .

"Article 9. The Third Division shall function at the regular site of the Division which provides the President.

"Article 10. The Divisions of The Hague and of Habana shall each elect by secret ballot, from among their own Judges, the Judges which they are each entitled to elect to the Third Division." (Cuba, draft statute presented to the Inter-American Conference.)

Regional Courts (No article in Statute of the P.C.I.J.)

1. Bolivia

"Without discarding the idea of creating an inter-American Court of Justice, the Delegation of Bolivia will lend full cooperation to the establishment of the International Court of Justice, which could have jurisdiction over fundamental juridical questions concerning international law in general and inter-Continental problems." (Bolivia, memorandum presented to the Inter-American Conference.)

2. Costa Rica

"Some

"Some thought might perhaps be given . . . to the creation of regional courts in addition to the central one for the purpose of facilitating access to judicial procedure." (Costa Rica, memorandum of December 5, 1944.)

3. Uruguay

"a) The juridical systems of the world organization and the regional organizations should neither exclude each other nor substitute for one another; rather, they should be joined together and coordinated, strengthening the domain of law." (Uruguay, memorandum of September 28, 1944; memorandum presented to the Inter-American Conference.)

Appeals (No article in Statute of the P.C.I.J.)

1. The Informal Inter Allied Committee

"152. It is not desirable that the Court should act as a court of appeal from local or regional tribunals administering international law. (paragraph 86)

"153. It may be found desirable to confer on the Court some sort of appellate jurisdiction from tribunals which may be set up under the Peace Treaties to deal with certain questions arising thereunder, analogous to the Mixed Arbitral Tribunals set up after the last war, with the object of securing uniformity of jurisprudence in the interpretation and application of the relevant provisions of the Peace Treaties. No direct right of appeal to the Court from the actual decisions, as such, of these tribunals should be established. On the other hand, it would be possible to set up a procedure whereby the opinion of the Court on matters of treaty interpretation or international law could be obtained for the guidance of the tribunals concerned. This might be done by some system of 'evocation,' which would probably suffice in practice to secure general uniformity of jurisprudence. This would be a matter to be decided

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by the instruments setting up the tribunals and not by the Statute of the Court." (paragraphs 87-90.)

2. Bolivia

"The International Court of Justice would have appellate jurisdiction over certain decisions of the Continental courts of justice, which might be subject to such appeal." (Bolivia, memorandum presented to the Inter-American Conference.)

Formulation of Rules of Procedure (Art. 30, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee proposes:

"146. The procedure of the Court should, in general, be left to be settled by the Court itself by Rules of Court. From this point of view, some of the provisions about procedure in the Statute could be eliminated and dealt with by Rules of Court. Subject to this, the procedure of the Court has worked well in practice and calls for little change." (paragraphs 76 and 77.)

2. Cuba

"Article 55. Each Division shall prescribe rules specifying the required provisions of the present Charter. Said rules shall be available to all the States subject to the Division prescribing them, and shall be subject to amendment by it whenever the Division deems it desirable.

"Article 56. The Third Division shall likewise prescribe its own rules when it shall meet for the first time, under the same conditions as provided for the other Divisions in the preceding article." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

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"The court should determine its own procedure, which might be similar to that of the permanent court of international justice." (Venezuela, memorandum presented to the Inter-American Conference.)

National Judges (Art. 31, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"127. The existing rule, which permits Judges of the nationality of any of the parties to a case to sit in the case, and also provides that any party may, if there is no Judge of its nationality on the Court, appoint some person (known as a 'national' or *ad hoc* Judge) to sit in the case, should be maintained. (paragraphs 38 and 39.)

"128. In order to spread interest in the Court, and to give a more permanent and assured position to the national Judges, each country party to the Statute should nominate one candidate, who, as such, would, *ipso facto*, become a member (though not a Judge) of the Court and the national judge of his country. These national judges would also be available to sit when required as supplementary Judges of the Court to make up the number of nine, and for other purposes." (paragraphs 40-44.)

2. Cuba

"Article 25. The Judges having the same nationality as any of the parties may sit in a case; the other party shall, however, if there is no Judge in the Division with its own nationality, have the right to appoint to the Division an 'ad hoc' Judge. When several States take one side of a controversy, they shall be considered as a single party to it." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

3. Venezuela

"In the event that, in a question brought before the court, one of the judges has the same nationality as one of the parties, the other party would have the right to appoint a supplementary judge to the membership of the electoral college." (Venezuela, memorandum presented to the Inter-American Conference.)

Salaries, Allowances, etc. (Art. 32, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"154. . . . Provision for . . . fixing the salaries and pensions of the Judges, Registrar, &c., should be made by the Statute or by collateral agreements between the Governments parties thereto. The existing scale of salaries and allowance, &c., should be provisionally continued. Provision should be made for ensuring that these are not affected by fluctuations in the value of the currency in which they are paid. (paragraphs 91-95.)

"155. As part of the general question of regulating the existing financial obligations of the League, it will be necessary to have regard to the accrued pension rights of past and present judges and officials of the Court." (paragraph 96.)

2. Cuba

"Article 26. The permanent Judges of the Court will receive the same maximum annual salary as did those of the Court at The Hague. The same will be true of the President of each Division, who shall receive also a special allowance. When the Vice-President takes the place of President, he shall receive such allowance for each day that he holds this office. Each Division shall determine the salaries of its Secretary and other personnel." (Cuba, draft statute presented to the Inter-American Conference.)

Finances

Finances of the Court (Art. 33, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"154. The finances of the Court, hitherto part of the budget of the League of Nations, should be placed on an independent and self-contained basis, whether or not there is in other respects any organic connexion between the Court and a future General International Organisation. Provision for financing the Court . . . should be made by the Statute or by collateral agreements between the Governments parties thereto. . . ." (paragraphs 91-95).

2. Cuba

"Article 27. The total expenses of each permanent Division, including the expenses for supplies and printing, shall be estimated by it beforehand each year. The amount shall be divided in as many equal parts as there are member States, and its collection will be entrusted to the President of each Division, without prejudice to the utilization of the Pan-American Union, in the case of the Habana Division.

"Article 28. The expenses of the third Division, when it shall have to meet, shall be apportioned equally among the litigant parties." (Cuba, draft statute presented to the Inter-American Conference.)

3. Venezuela

". . . it would be sufficient to make some changes . . . such as . . . granting it financial autonomy." (Venezuela, memorandum of October 31, 1944.)

CHAPTER II

COMPETENCE OF THE COURT

Access to the Court (Arts. 34 and 35, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"136. It should be open to all States, whether or not members of the future General International Organization, to become parties to the Statute of the Court; but no country should be permitted to have recourse to the Court which is not a party to its Statute (paragraph 54)."

2. Cuba

"Article 29. Only States or dominions can appear before the Sections of the Court." (Cuba, draft statute presented to the Inter-American Conference)

3. Venezuela

"6. In the event of a conflict between States which are not members of the Organization, in the assumption that the general organization is not made universal, it seems desirable to establish:

"a. that a State which is not a member be enabled to go before the court against a member State;

"b. that a member State should be enabled to go before the court against a non-member State;

"c. that provision be made for the possibility that non-member States subscribe to a clause of submission to the jurisdiction of the court; and

"d. that

"d. that the council may transmit to the court juridical conflicts to which non-member States are parties."
(Venezuela, memorandum presented to the Inter-American Conference)

Jurisdiction of the Court (Art. 36, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"137. Since it is of prime importance that the jurisdiction of the Court should be confined to matters that are really 'justiciable,' and that all possibility should be excluded of the Court being used to deal with cases which are essentially political in their nature and require to be dealt with by political means, a more precise definition of the jurisdiction of the Court is required than that contained in the existing Statute (paragraphs 55-57).

"138. The Statute should contain no provision making the jurisdiction of the Court compulsory for the adhering States. On the other hand, there would, as at present, be nothing to prevent countries voluntarily accepting compulsory jurisdiction by other means, either generally or in defined cases, *e.g.*, under particular bilateral or multilateral conventions in regard to disputes arising thereunder, or by means of a general agreement between two or more States to have recourse to the Court in justiciable disputes arising between them, or by acceptance of the existing 'Optional Clause,' which should be retained. There would equally be nothing to prevent compulsory recourse to the Court being made a condition of membership of any future General International Organisation, to such extent and on such terms as its members thought proper and decided to lay down in the Constitution of the Organisation. In such event the Constitution of the Organisation could also set out the means whereby the decisions

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of the Court in these cases should be enforced (paragraphs 58-60).

"139. In imposing any general obligation on States to have compulsory recourse to the Court as contemplated in paragraph 138 above, it will almost certainly be necessary to allow countries to make certain reservations, as in the case of acceptance of the 'Optional Clause' (paragraph 61)."

2. The Inter-American Juridical Committee states:

"By No. 6 [of Chapter VIII, Section A of the Dumbarton Oaks Proposals] it is provided that justiciable disputes should 'normally' be referred to the international court of justice. No provision is made, however, in the Proposals for the determination of the cases governed by the word 'normally'. The Juridical Committee, therefore, would suggest that the word 'normally' be omitted from the text of No. 6; otherwise the court might be deprived of its proper function of passing upon its jurisdiction.

"No provision is made with respect to the decision whether a particular dispute is or is not justiciable. No doubt the conference at Dumbarton Oaks left this matter to be settled in the statute of the court. But it would seem desirable that if mention is to be made in the Charter of the jurisdiction of the court, a clause should be added referring to the statute of the court for the determination of the jurisdiction of the Court. If by 'justiciable disputes' are meant disputes in which states are in conflict as to their respective legal rights and which are therefore by their nature susceptible of decision by the application of the principles of law, then the court should be competent to decide what disputes are to be included in that category. Generally speaking, all disputes which the parties cannot settle between themselves should be submitted to the court. If the court

refuses

refuses jurisdiction, on the ground that the dispute is not a justiciable one, then the dispute should go to the Security Council with final authority.

"By No. 7 provision is made that matters which by international law are solely within the domestic jurisdiction of the state concerned are excepted from the competence of the Security Council under the terms of Nos. 1-5. This paragraph also needs clarification. Who is to decide what questions are 'within the domestic jurisdiction of the state'? The question would seem to be properly one for the court to decide. The terms of No. 7 are somewhat misleading, in that they give the impression that neither the Security Council nor the court would have competence in the matter. Doubtless the intention of the Proposals is to assure that states will be protected in the exercise of their domestic jurisdiction from any interference by the agencies of the new Organization. But the decision whether in a particular case the matter is or is not within the domestic jurisdiction of the state must obviously be left to the court as the judicial agent of the Organization. Otherwise the door would be open to evasions of the obligation of pacific settlement."

3. Inter-American Conference on Problems of War and Peace

Resolution XXX of the Final Act of the Inter-American Conference states:

"The Inter-American Conference on Problems of War and Peace,

RESOLVES:

1. That the Secretary General of the Conference transmit to the states which formulated the Dumbarton Oaks Proposals, to the other nations invited to the forthcoming Conference at San Francisco, and to

that

that Conference itself ... the following points regarding which a consensus exists among the American Republics represented in this Conference that did not participate in the Dumbarton Oaks conversations:

. . . . .

d) the desirability of extending the jurisdiction and competence of the international tribunal or court of justice; ..."

4. Australia

Dr. Evatt, Minister for External Affairs, has stated:

"...There would also be a Permanent Court of Justice to which will be referred all those disputes between nations which are capable of adjudication by reference to existing international obligations. ...

. . . . . .

"Within the framework of the world organisation, the part of the Permanent Court can and should, in my view, become far more important. The body of international law applicable to international controversies should expand. As principles are declared, the range of justiciable disputes will be widened. Many so-called non-justiciable disputes will become justiciable and, if so, to use the phrase of the late Mr. Justice Higgins in connection with the Commonwealth Court will open up in the international field many 'new provinces for law and order.'" (Statement to Australian House of Representatives, September 8, 1944)

5. Belgium

5. Belgium

"V, c) Members of the Organization should recognize the obligatory jurisdiction of the Permanent Court of International Justice as regards any question of law for which they have not made use of another method of peaceful settlement; they should acknowledge themselves bound by the decisions of the Court." (Belgium, memorandum of February 2, 1945)

6. Bolivia

"VI. Without discarding the idea of creating an inter-American Court of Justice, the Delegation of Bolivia will lend full cooperation to the establishment of the International Court of Justice, which could have jurisdiction over fundamental juridical questions concerning international law in general and inter-Continental problems.

"The International Court of Justice would have appellate jurisdiction over certain decisions of the Continental courts of justice, which might be subject to such appeal.

"The International Court of Justice should be strengthened by appropriate changes in its statute, in order to give it the jurisdiction and competence which such an important organism requires for the performance of its functions." (Bolivia, memorandum presented to the Inter-American Conference)

7. Brazil

7. Brazil

"5. It seems desirable that the pact to be drawn up should make mention that when a controversy, under 4, 5 and 6 of Section A, Chapter VIII of the project, does not reach a solution by agreement between the parties, the Security Council should submit the question to the International Court of Justice, or to a Court of Arbitration to be organized in accordance with the methods foreseen in the Geneva Protocol of October 2, 1924, dependin upon whether or not it deals with a conflict of a juridical nature, excepting, however, the questions dealt with in paragraph 7--questions which international law leaves to the exclusive competence of each state. ...

"6. It is believed to be indispensable that decision should not be left to the interested party, during the course of a controversy in which peace is endangered, as to whether it should be included among those questions which international law leaves to the exclusive competence of the interested states (Paragraph 7, Section A, Chapter VIII), it being deemed advisable that, in each case, the classification of these questions be referred to the International Court of Justice at the request of one of the parties or of the Security Council." (Brazil, memorandum of November 4, 1944)

Brazil has recommended that the following paragraph to be designated as No. 8 be added to Chapter VIII, Section A:

"If, in a controversy, one of the states a party thereto, should elect that the controversy falls exclusively under its internal jurisdiction, it shall devolve upon the permanent court of international justice to give its opinion on the matter, either at the request of one of the parties or at the request of the Security Council." (Brazil, memorandum presented to the Inter-American Conference)

8. Costa Rica

8. Costa Rica

"With respect to the Court of Justice, the plan follows that of the League of Nations and merits entire acceptance. Some thought might perhaps be given to the possibility of there being submitted to it not only questions of a juridical nature but all questions, even those of a political character, that might affect the general security or peace..." (Costa Rica, memorandum of December 5, 1944)

9. Cuba

"Any differences or disputes between the Nations, whatever their nature and whatever their origin, shall be settled obligatorily by conciliation, arbitration or international justice." (Cuba, draft resolution submitted to the Inter-American Conference)

"Art. 30. The competence of each Section /of the Court/ extends to all differences that may arise among the States governed by this Covenant, in all cases that have not been susceptible to solution by diplomatic means or that, by virtue of prevailing agreements and conventions among such States, must be decided in some other form." (Cuba, draft statute presented to the Inter-American Conference)

10. Dominican Republic

"9) Chapter VII of the Proposals refers to the establishment of an International Court of Justice and, in the plans drawn up at Dumbarton Oaks, the idea of extending the importance of that Court has been indicated.

"From all points of view, especially in the event that the Security Council is definitively accorded the character accorded to it in the Proposals, as the organ having supreme authority in the International Organization, it would be

proper

proper to allow upon that Court the greatest possible participation consistent with its own high significance in the maintenance of peace and security.

"In this regard, it must be emphasized, as the Juridical Committee has done in its comments, that 'nothing has been determined with reference to the decision whether a given dispute is or is not justiciable, but the Dumbarton Oaks Conference has proposed this question for inclusion in the Statute of the Court.'

"The importance of the point raised is of special concern in relation to the considerations which have been made in regard to the part which should be assigned to the International Court in the World Organization and, in view of this, the Dominican Government adheres to the criterion expressed by that Committee in the following paragraph:

"'However, supposing that the Charter is to establish the jurisdiction of the Court, it would seem desirable to add a clause in which reference is made to the Statute of the Court for the determination of its jurisdiction. If by "justiciable disputes" it means disputes in which there is a conflict between States on their respective rights, and which are, by their nature, justiciable through the application of the principles of law, the Court should be competent to state which disputes are to be included in this category. In general terms, all disputes which can not be settled by the parties thereto should be submitted to the Court. If the latter should decline its jurisdiction, on the claim that the controversy is not justiciable, the dispute should then be brought before the Security Council for its final decision.'

"It is not intended that any rule should be set down to the effect that the Court should have jurisdiction over questions of a political nature, but it is intended that the Court is the organ which should decide whether a dispute is justiciable, if the parties concerned are not able to settle it by themselves. In fact, defining the criterion on which a judicial question is distinguished from a political question is a delicate, difficult, and important task, and the Court itself should be empowered to determine its own jurisdiction.

"In Article 13 of the Covenant of the League of Nations, attention was given to the criterion considered above, inasmuch as, far from establishing a general rule on the matter, the authors of the Covenant preferred to formulate the following directions which leave a vast field open to judicial action: 'Among disputes considered as justiciable, there are included those relating to the interpretation of treaties, points in international law, the reality of any fact which, if established, would constitute a breach of an international obligation, or the extension of the nature of a reparation due because of such a breach.'

"A complication however arises, which should be studied, concerning cases requiring action, which are reserved for the jurisdiction of the Security Council. In such cases the important factor seems to be the urgency of the question; but even under such a condition, the matter should be submitted to the Court, whenever possible, so that the latter shall examine it in accordance with its jurisdiction.

"The delicate point in this question is that the Council is the body which will have to determine which cases require action, and in this regard, there does not seem to be any kind of control in the Dumbarton Oaks plan.

"As the Juridical Committee has indicated, it is advisable that the protocol annexed to the

statute of the Permanent Court of International Justice, which at the present time is a separate treaty, be annexed to the Charter of the proposed General Organization. The effectiveness of that document would continue, with the necessary changes."
(Dominican Republic, memorandum presented to the Inter-American Conference)

11. Guatemala

"With regard to the International Court of Justice, it appears to it indispensable to insist on the convenience of granting to that juridical organ full jurisdiction to compel the appearance of any state summoned, without restriction with respect to the subject matter in litigation; and that, acting in complete independence in relation to the Community, it may have all the backing of the latter for the faithful fulfilment of decisions. Should the states, when direct methods, good offices, mediation and conciliation to solve their disputes have failed, be at liberty to submit them or not to do so to an international tribunal of justice or to arbitration, and should they be able to circumscribe to their whim the proceedings of this tribunal and the scope of decisions, but little progress will have been made towards the extirpation of wars in the future. Experience has shown that when a state fears an unfavorable decision it does whatever is within its power to evade the submission of the litigation to a tribunal: the statement is already classic that 'the dignity of the nation does not permit that its right be questioned or be open to discussion'. When in those cases the state reaches the point of agreeing to the judicial or arbitral consideration of the controversy, it circumscribes to such an extent the powers of the judges or the subject matter of the proceedings that it renders nugatory every effort to reach a just and equitable solution. The compulsory jurisdiction of the tribunal would avoid the repetition of such maneuvers." (Guatemala, memorandum of November 14, 1944)

"With respect to the International Court of Justice, it seems indispensable to insist upon the advisability of giving that organ full jurisdiction to compel the appearance of any respondent State, without restrictions with respect to the subject-matter of litigation, and to insist that, acting in complete independence from the community, it have the latter's backing to obtain faithful compliance with its decisions. To render the Court effective, it is considered essential that it be empowered to pass upon specific disputes ex aequo et bono, upon the request of one of the parties." (Guatemala, memorandum presented to the Inter-American Conference)

12. Honduras

"9. Honduras gives its complete support to the creation of an International Court of Justice, mentioned in chapter 7 of the proposals, on the basis of the statute of the Permanent Court of International Justice. ... In discussing the statute which would constitute it, there would be determined its jurisdiction and competency over juridical matters and those matters of a political character in order to give it a larger sphere of action and to have the functioning of the International Court of Justice a means to bring to a conclusion international disputes or controversies.

"It is noted that paragraph six, section A, chapter 8 provides that justiciable controversies should normally be referred to the International Court of Justice." (Honduras, memorandum of January 945; also, memorandum presented to the Inter-American Conference.)

13. Mexico

13. Mexico

"TEXT SUGGESTED (Chapter VIII, Section A)
7. The provisions of paragraph 1 to 6 of Section A should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned. *In case of any difference of opinion in regard to the matter the question will be settled by the International Court of Justice*." (Mexico, memorandum presented to the Inter-American Conference)

14. The Netherlands

"...Furthermore, it would seem desirable to the Netherlands Government in the interest of international justice that the Plan should contain an express stipulation to the effect that all member-states (1) recognise the Court as having compulsory jurisdiction in justiciable disputes to which they are a party and for the solution of which the parties do not agree on another mode of settlement, and (2) recognise the Court's findings as binding." (The Netherlands, memorandum of January 1945)

15. Norway

"We understand Chapter VIII A (6) as conferring on the Security Council the authority to refer to the International Court for adjudication any legal dispute submitted to the Council. We are of opinion that it should be stated that the Council is obligated to take such action if it is demanded by one of the parties to the dispute and no treaty in force between the parties prescribe another procedure. Such a rule appears to be the natural consequence of the provision in VIII A (6) to the effect that justiciable disputes normally should be referred to the Court." (Norway, memorandum of March 2, 1945)

16. Panamá

16. Panamá

"...This Court should have jurisdiction over all litigations or conflicts of an international character which may be submitted to it, if it has not been possible to settle them previously by direct pacific means or by arbitration." (Panamá, memorandum presented to the Inter-American Conference)

17. Paraguay

"Paraguay strongly supports the idea of establishing an International Court of Justice to settle, in obligatory and final instance, all of the questions which it has not been possible to decide by other pacific means of settlement. We say obligatory instance because its jurisdiction should admit no exception when other pacific means have failed; and we say 'all questions' because the distinction between 'political questions' and 'juridical questions' should be categorically rejected." (Paraguay, memorandum of February 17, 1945)

"Paraguay endorses the idea of organizing an INTERNATIONAL COURT OF JUSTICE, to hear in obligatory and final instance, all questions which may not have been settled by other pacific means of solution. We say obligatory instance because its competence must not allow any exceptions, when all other means have failed." (Paraguay, memorandum presented to the Inter-American Conference)

18. Peru

Peru has proposed the following amendments to Chapter VIII, Section A of the Dumbarton Oaks Proposals:

"(a) Rule 6 should read: "Justiciable disputes shall be obligatorily submitted to the

International

International Court of Justice. The Security Council shall have authority to request the opinion of the Court on legal questions relating to other disputes."

(b) Rule 7 should read: "Where disputes or controversies arise between two States from questions which either of them considers as being, according to international law, solely under the domestic jurisdiction of the State, the two States or either of them shall have the right to submit to the decision of the International Court of Justice the question whether or not the said disputes or controversies belong to the domestic jurisdiction of the State." (Peru, memorandum presented to the Inter-American Conference)

19. Uruguay

"VI. The Uruguayan Government considers desirable the constitution of an International Court of Justice, which would act in all controversies of an international character, without any exceptions, which might be submitted to its consideration.

"To this end, it is held that it should be established that all differences, oppositions or conflicts among nations, whatever their nature, must of compulsion be submitted to the International Court of Justice if they are not previously solved by friendly means of arbitration.

"This thesis is based on the certainty that all international controversies are susceptible to solution by law, and on the fear that distinction between juridical disputes and political disputes, as well as the exclusion of the latter from the jurisdiction of the International Court of Justice, might lead again to the intervention of force in conflicts among nations.

"If the Court were to fall into such distinctions and such exclusions, it would not be advanced beyond the similar institutions created by the Versailles Treaty (Articles 13 and 14)." (Uruguay, memorandum of September 28, 1944)

"It /the Government of Uruguay/ deems convenient the constitution of an International Court of Justice which should have cognizance of every international dispute, without exception, its intervention being compulsory in case solution of said dispute is not obtained by other means." (Uruguay, memorandum presented to the Inter-American Conference)

20. Venezuela

"In this chapter /Chapter VII of the Dumbarton Oaks Proposals/ the important question of knowing what will be the character of the jurisdiction of this Court is omitted. It would be expedient to establish definitively the obligatory jurisdiction of the Court for conflicts of a legal order.

"It has been said that the inclusion of this provision, the effect of which would be to impose on each member the obligation to resort to the Court to settle a legal controversy with any other member, would be an obstacle for the adherence of some countries. Nevertheless, the moment seems propitious, and it is not very probable that any United Nation will renounce being a member of the Organization to avoid this obligation, alleging that it is an infringement of its sovereignty, since in other aspects the Organization implies much greater limitations to the benefit of the community. At any rate, if this should occur, the compulsory clause could be attenuated by admitting, for example, its effectiveness after a fixed date. In any case, the Court itself should determine, when there is a disagreement, whether the conflict is of a legal or political nature."

Referring to Chapter VIII of the Dumbarton Oaks Proposals, Venezuela states:

"(5) The powers of the Council are, on the contrary, with respect to the solution of controversies, more susceptible of limitation in favor of the competence of the International Court, as an organ hearing those controversies according to criteria of law and equity. This fact is more evident if it is considered that an increase of the powers of the Assembly as against the powers of the Council may appear as an increase of the relative power of the small and medium Powers, that is, of the Powers which will have less responsibility in the maintenance of peace, while an increase of the attributions of the Court as against those of the Council would appear as a strengthening of the principle of law and of the sentiment of international solidarity.

"It is opportune to point out that the ideal criterion would be to entrust the solution of international controversies to the International Court or an independent arbitration agency, and entrust to the Council the mission of executing such decisions and of imposing on any States in conflict the intervention of the agency mentioned. However, we are not unaware of the difficulties which the above-mentioned ideal solution might present in the international situation. In any case the following general orientations are traced:

"First: The intervention of the Security Council and of the International Court of Justice should be excluded in cases in which other pacific means of solution of conflicts are in process, whether they derive from particular agreements signed by the States, or whether they derive from the existence of regional groups freely concerted by them.

"Second: All conflicts of a legal nature should be submitted obligatorily to the International

Court

Court of Justice, when the pacific means in reference fail, attributing likewise to the Court, in case of disagreement, the power of determining the nature of the conflict.

"Third: The greatest possible intervention of the Court of International Justice in the other conflicts should be established, that is, in the so-called political conflicts, by means of the issuance of opinions which may be requested by the Council, by the Assembly, or by any individual States on those points which the Court itself deems susceptible of a legal opinion.

"Fourth: The necessary and compulsory action of the Security Council should be favored for the execution of the decisions of the Court and others that, according to the Statute, may be considered as an expression of the will of the community, as well as to oblige States to respect the intervention of the international organs."

. . . .

"No. 4. [of Chapter VIII, Section A of the Dumbarton Oaks Proposals] In this paragraph a distinction should be drawn between legal controversies, which the States would bind themselves to refer to the International Court, and the other disputes which the States would refer to the Security Council, with the express and important reservation that, in case of failure to agree, the Court should determine the nature of the dispute.

"No. 5. In harmony with what was said in Nos. 1 and 3, it would seem expedient to indicate that the intervention of the Council would take place after the ordinary means of settlement had failed.

"No. 6. In harmony with what was said in No. 4, 'justiciable' disputes should be referred in all cases to the International Court of Justice.

Likewise

Likewise, the Assembly and any State which is a member of the community of nations should also have the right to obtain the opinion of the Court and, in case of disagreement as to the nature of a conflict or on the competence of the Court to give an opinion, the Court would have to be the only organ adequate to determine its competence.

"No. 7. This paragraph does not give rise to any observation if, as one may believe, the corresponding international authority, that is, International Court, Assembly or Council, is the agency authorized to determine which questions are attributed by international law to the domestic jurisdiction of a State. In any case, in view of the importance of the problem, an amendment seems necessary to make such interpretation evident."

(Venezuela, memorandum, October 31, 1944)

"11. Provide that the statute of the International Court of Justice be based on that of the Permanent Court at the Hague, with appropriate modifications, among which the most essential ones are indicated below:

"(a) Grant mandatory jurisdiction to the International Court of Justice over all justiciable disputes which other peaceful means of solution have not succeeded in settling; and

"(b) Grant to the said Court power to rule upon questions concerning its own jurisdiction. (Chapter VII, No. 3)"

(Venezuela, memorandum presented to the Inter-American Conference)

"A. Jurisdiction

"1. The court would be competent for any question that the parties might submit to its jurisdiction.

"2. The

"2. The jurisdiction of the court would be compulsory to the members of the general organization in conflicts of a juridical nature. In this connection, it would be desirable to give to such conflicts a general designation, to be followed, as an explanatory title, by a reference to the cases foreseen in Article 36 of the Statute of the Permanent Court of International Justice and in the second paragraph of Article 13 of the Covenant of the League of Nations.

"3. The court shall determine the limits of its competence. In consequence, exceptions relative to political conflicts and to questions falling under the internal jurisdiction of a State should be heard as exceptions before that court.

"4. The court shall hear a case whenever any other means of pacific settlement may have failed or may not have been made effective, and this course may be followed at the request of any of the parties.

"5. It seems desirable to allow the court to hear a case suggested to it by the Council.

"6. In the event of a conflict between States which are not members of the organization, in the assumption that the general organization is not made universal, it seems desirable to establish:

a. that a State which is not a member be enabled to go before the court against a member State;

b. that a member State should be enabled to go before the court against a non-member State;

c. that provision be made for the possibility that non-member States subscribe to a clause of submission to the jurisdiction of the court; and

d. that

d. that the council may transmit to the court juridical conflicts to which non-member States are parties.

"7. The council should be empowered to dictate precise measures to impose the jurisdiction of the court or to execute its decisions. In such action by the council the requirements of the procedure relating to a unanimous vote or to an excessively qualified vote should be eliminated or reduced as much as possible; in any event the possible existence of the power of suspensive veto on the part of a great power concerned should be eliminated.

"8. A study should be made of a way to differentiate clearly, in the matter of treatment, between a State submitting to the jurisdiction and decisions of the court and a State repudiating them. It seems desirable to recommend that a State repudiating the jurisdiction or decisions of the court be suspended from the enjoyment of the rights inherent to membership in the international organization.

"9. It seems desirable to recommend that the obligation of the council, in regard to the imposition of the jurisdiction and decisions of the court, be especially compelling in those cases in which the court has acted at the suggestion of the council.

"10. In the undertakings of submission to the jurisdiction of the court, implicitly expressed by signature of the instruments constituting the court, any statement of reservation should be avoided as far as possible.

If this is unavoidable, such reservations should be limited to one or two general formulas. In this connection the following might be considered admissible:

a. a reservation in reference to events which took place before a given date, as, for

example

example, the beginning of hostilities of the signature of peace treaties; and

b. a reservation in reference to relations with States which may be regarded as not submitting to the jurisdiction of the court."

(Venezuela, memorandum presented to the Inter-American Conference)

Reference to the Court in Treaties (Art. 37 of P.C.I.J.)

There are no comments or proposals related to this topic.

Law to be Applied (Art. 38, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"140. The law to be applied by the Court is set out in Article 38 of the Statute, and, although the wording of this provision is open to certain criticisms, it has worked well in practice and its retention is recommended (paragraph 62)."

2. Cuba

"Article 31. The Sections [of the Court] shall apply:

"(1) The general or special international conventions that establish rules expressly recognized by the litigating States.

"(2) International customs.

"(3) The general principles of law recognized by civilized States.

"(4) The rules of International Law, for the establishment of which judicial decision of an international order and the doctrines of the best qualified publicits shall serve." (Cuba, draft statute presented to the Inter-American Conference)

3. Venezuela

3. Venezuela

> "11. In regard to the law applicable, the provision of Article 38 of the statute of the Court of International Justice does not give occasion to any fundamental objection." (Venezuela, memorandum presented to the Inter-American Conference)

Ex aequo et bono (Art. 38, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

> "140. ... although the wording of this provision [Article 38 of the Statute] is open to certain criticisms, it has worked well in practice and its retention is recommended."

2. The Inter-American Juridical Committee states:

> "The Juridical Committee assumes, therefore, that whether the Security Council undertakes to settle the dispute upon its own account or decides to refer the case to the international court or to a special tribunal or commission, the basis of the decision will be the generally accepted principles of justice represented by the standard ex aequo et bono."

2. Cuba

In its draft statute presented to the Inter-American Conference, the Cuban Government omits in Article 31, relating to the law to be applied by the court, the provision authorizing the court to decide a case ex aequo et bono.

3. Guatemala

> "To render the Court effective, it is considered essential that it be empowered to pass upon specific disputes ex aequo et bono upon the

request

request of one of the parties." (Guatemala, memorandum presented to the Inter-American Conference)

4. Venezuela

"1'. In regard to the law applicable, the provision of Article 38 of the statute of the Court of International Justice does not give occasion to any fundamental objection." (Venezuela, memorandum presented to the Inter-American Conference)

CHAPTER III

PROCEDURE

Official Languages (Art. 39, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee states:

"The question of the languages of the Court is one of principle and should be dealt with in the Statute, except that the question of translations or interpretations from one language to another in the course of the written pleadings or oral hearing should be left to be settled by the Court. The existing rule that French and English are the official languages of the Court should be retained (paragraph 78)."

2. Cuba

"Article 32. The official languages for the Division of The Hague will be French and English, and for the Division of Habana, Spanish, English, Portuguese and French." (Cuba, draft statute presented to the Inter-American Conference)

Procedure of Court: General (Arts. 40, 41, 42, 44, 51 54, 63, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee states:

"The procedure of the Court should, in general, be left to be settled by the Court itself by Rules of Court. From this point of view, some of the provisions about procedure in the Statute could be eliminated and dealt with by Rules of Court. Subject to this, the procedure of the Court has worked well in practice and calls for little change (paragraphs 76 and 77)."

2. Cuba

2. Cuba

"Article 35. The claimant shall be the party that first submits to the Court the controversy pending with the other State.

If both appear at the same time, or give notice of the intention to do so in a document signed by both and do not specify who is to be the claimant, the Court shall decide by drawing lots.

"Article 36. To the petition, which shall contain a statement of the facts and of the legal grounds, the claimant shall attach the evidence collected.

"Article 37. The answer by the other party shall follow the petition and shall also be accompanied by the collected evidence, which shall be served in the same manner on the claimant.

"Article 38. To the pleadings mentioned in the preceding articles, there shall follow a reply by the claimant and a counter-reply by the respondent, both to be accompanied by the evidence collected and to be served in the same manner.

In these last two pleadings the contending parties shall propose the oral testimony to be rendered before the Court.

Any dilatory exception shall likewise be discussed in the reply and counter-reply.

These documents end the first phase of the proceedings and the case passes to the oral proceedings for a period set by the Division, during which the witnesses and the experts shall first be heard, in accordance with the rules to be established by the Court.

"Article 39. At the hearing which shall be held after the taking of the testimony and upon the expiration of the time set therefor, the lawyers of the parties shall be heard in the order previously determined, each of them being allowed to speak in turn a second time."

(Cuba

(Cuba, draft statute submitted to the Inter-American Conference)

Written and Oral Proceedings (Art. 43, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"It is desirable to regulate oral proceedings before the Court in such a way as to avoid a general repetition of matters already covered by the written pleadings, but the matter is one for the discretion of the Court rather than for written rules (paragraph 77)."

2. Cuba

"Article 34. The proceedings have two phases, one written and the other oral.

The written proceedings comprise the petitions, answers, replies and counter-replies, as well as all evidence filed in support thereof.

Every document in the written proceedings, which is filed with the Secretary of the Court, shall be served on the other party or parties by the said Secretary in a true certified copy.

The oral proceedings consist in the hearing by the Court of the testimony of witnesses and experts of the parties and their lawyers." (Cuba, draft statute submitted to the Inter-American Conference)

Control of Hearings (Art. 45, Statute of the P.C.I.J.)

1. Cuba

"Article 41. The oral argument shall be under the direction of the President of the Division." (Cuba, draft statute submitted to the Inter-American Conference)

Public Hearings (Art. 46, Statute of the P.C.I.J.)

1. Cuba

"Article 42. The hearing is public unless the Court decides otherwise, or the two parties so request." (Cuba, draft statute submitted to the Inter-American Conference)

Minutes of Hearings (Art. 47, Statute of the P.C.I.J.)

1. Cuba

"Article 43. Minutes shall be taken of each hearing, which shall be signed by the Secretary and the President of the Division." (Cuba, draft statute submitted to the Inter-American Conference)

Conduct of Proceedings (Arts. 48, 49, Statute of the P.C.I.J.)

1. Cuba

"Article 44. The Court shall prescribe rules for the conduct of the proceedings and shall take all measures concerning the admission of evidence. The Court shall have the authority to order ex oficio the taking of evidence which it shall deem advisable." (Cuba, draft statute submitted to the Inter-American Conference)

Inquiries at Direction of Court (Art. 50, Statute of the P.C.I.J.)

There are no comments or proposals related to this project.

Refusal to Accept Further Evidence (Art. 52, Statute of the P.C.I.J.)

1. Cuba

"Article 40

"Article 40. The oral proceedings having ended, the Court shall declare the case closed for decision." (Cuba, draft statute submitted to the Inter-American Conference)

Refusal to Defend Case (Art. 53 of the P.C.I.J.)

There are no comments or proposals related to this topic.

Voting in Court (Art. 55, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"...the present method for producing Judgments is satisfactory and should be maintained. The majority rule for decisions should be maintained, despite the fact that it may result in decisions being given by a majority of only one (paragraphs 79 and 80)."

2. Cuba

"Article 45. Decisions shall be rendered by a majority of votes. In case of a tie, the vote of the presiding Judge shall decide." (Cuba, draft statute submitted to the Inter-American Conference)

Dissenting Opinions (Arts. 56, 57, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"The right to give dissenting judgments is of great value and should be retained. Further, all Judges, whether of the majority or the minority, should state their views in separate Judgments, though it would remain open to any two or more of them to combine in a common judgment. The actual decision of the Court would then be confined to the 'dispositif' or formal order or ruling relative to the matter before the Court. The reasons for or against that decision would, however, be set out in a number of separate judgments (paragraphs 81-84)."

2. Cuba

"Article 46. The decision shall set forth reasons in support thereof and shall mention the names of the participating Judges.'

"Article 47. If the decision is not, in whole or in part, the unanimous opinion of the Judges, the dissenting Judges have the right to have their vote recorded, as well as to render their private opinions."

(Cuba, draft statute submitted to the Inter-American Conference)

Delivery of Judgments (Art. 58, Statute of the P.C.I.J.)

1. Cuba

"Article 48. The decision shall be signed by the President and by the Secretary of the Division and shall be read at a public session, to which the lawyers of both parties shall be summoned." (Cuba, draft statute submitted to the Inter-American Conference)

Force of Decisions (Art. 59, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"Article 59 of the Statute, which provides that 'The decision of the Court has no binding force except between the parties and in respect of that particular case,' should be maintained (paragraph 63)."

2. Cuba

"Article 49. The decision of the Court is not binding except on the litigants and with respect to the case which has been decided." (Cuba, draft statute submitted to the Inter-American Conference)

3. Netherlands

3. Netherlands

"Furthermore, it would seem desirable to the Netherlands Government in the interest of international justice that the Plan should contain an express stipulation that all member states ... recognize the Court's findings as binding." (Netherlands, memorandum of January, 1945)

Right of Appeal from Judgment of Court (Art. 60, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

"The existing provision of the Statute that the decisions of the Court are final and not subject to appeal should be maintained (paragraph 85)."

2. Cuba

"Article 50. There is no appeal from a decision, but the Division may interpret it by a ruling at the request of either of the parties." (Cuba, draft statute submitted to the Inter-American Conference)

Revision of Judgment (Art. 61, Statute of the P.C.I.J.)

There are no comments or proposals on this topic.

Intervention of Interested Parties (Art. 62, Statute of P.C.I.J.)

There are no comments or proposals on this topic.

Costs (Art. 64, Statute of the P.C.I.J.)

1. Cuba

"Article 51. Unless the Court decrees otherwise, each party shall pay its expenses in connection with the proceedings." (Cuba, draft statute submitted to the Inter-American Conference)

CHAPTER IV

ADVISORY OPINIONS

Requests for Advisory Opinions (Art. 65, Statute of the P.C.I.J.)

1. The Informal Inter-Allied Committee recommends:

> "142. The Court's jurisdiction to give Advisory Opinions should be maintained (paragraphs 64-68).
>
> "143. The right to ask for such an opinion should not be confined to the executive organs of any future General International Organization, but should be extended to all international associations of an inter-state or inter-governmental character possessing the necessary status, and to any two or more States acting in concert (paragraphs 69-71).
>
> "144. References should be confined to matters of law which fall within the jurisdiction of the Court. They should be made on the basis of a fully stated and agreed set of facts (paragraphs 69 and 72).
>
> "145. The Court should be given the necessary competence to reject any application not in conformity with paragraphs 143 or 144, or which, in its opinion, involved any other abuse of the jurisdiction relating to Advisory Opinions (paragraphs 72-74.)"

2. Belgium, in discussing the situation which would arise if the recommended procedures of the Security Council for the settlement of a dispute would be inoperative, states:

> ". . . where it should judge the situation thus created to be dangerous for the maintenance

of

of international peace and security, the Security Council would have to take whatever equitable decision could settle the decision peacefully. However, before a project for the settlement of a difference, drawn up by the Council or by any other body became final, each of the States concerned should be able to ask an advisory opinion from the [International] Court of Justice as to whether the decision respected its independence and vital rights." (Belgium, memorandum of February 23, 1945)

3. Guatemala

" . . . it seems to this Government that it would be very adviseable for the new Court to have the power to render advisory opinions at the request of the Assembly or the Security Council of the world organization." (Guatemala, memorandum presented to the Inter-American Conference)

4. Mexico proposes that the second sentence of Chapter VIII, Section A, paragraph 6 of the Dumbarton Oaks Proposals should read:

"The Security Council and the General Assembly should be empowered to refer to the court, for advice, legal questions connected with other disputes." (Mexico, memorandum presented to the Inter-American Conference)

5. Norway

"The Assembly should have this authority [to ask the Permanent Court of International Justice for an advisory opinion]. It should have the right to ask for an advisory opinion on any legal question where it needs an authoritative opinion, including questions relating to the interpretation of the Charter." (Norway, memorandum of March 2, 1945)

Norway further declares:

"The authority for the Security Council to request an advisory opinion of the International Court as formulated in the proposals must apply to legal questions arising out of any dispute. But the Security Council should have a similar authority to request an opinion of the Court also concerning legal questions unconnected with any particular dispute." (Idem.)

6. Venezuela declares that the Dumbarton Oaks Proposals should

"Provide that the right to obtain the opinion of the Court in certain cases should also belong to the Assembly, to international agencies, and to states in particular." (Venezuela, memorandum presented to the Inter-American Conference)

Official Comments on the Provisions of the Dumbarton Oaks Proposals relating to an International Court of Justice

Official Sources Consulted

BELGIUM

Suggestions of the Belgian Government concerning the Proposals for the Maintenance of Peace and Security Formulated at the Four-Power Conference Held at Dumbarton Oaks, and Published on October 9, 1944, dated February 2, 1945

BOLIVIA

Proposals on Plan for General International Organization, submitted by the Delegation of Bolivia to the Inter-American Conference on Problems of War and Peace, held February 21-March 8, 1945, Mexico City, Mexico (hereinafter referred to as "Inter-American Conference")

BRAZIL

Memorandum of the Brazilian Government to the United States Government, November 4, 1944

Remarks on the Dumbarton Oaks Proposals, submitted by the Delegation of Brazil on February 25, 1945 to the Inter-American Conference.

COSTA RICA

Memorandum on Establishment of an International Organization, transmitted from the Government of Costa Rica to the United States Government on December 5, 1944

CUBA

Suggestions on the Dumbarton Oaks Proposals, submitted by the Delegation of Cuba on February 27, 1945 to the Inter-American Conference

Proposal of the Delegation of the Republic of Cuba on the New International Organization (Conference Document No. 25), submitted to the Inter-American Conference

Proposal by the Delegation of Cuba, on the Declaration of the Rights and Duties of Nations (Conference Document No. 26), submitted to the Inter-American Conference

Draft of Statute for the Organization and Operation of a New Permanent Court of International Justice (Conference Document No. 28), submitted by the Delegation of Cuba to the Inter-American Conference

DOMINICAN REPUBLIC

Remarks on the Dumbarton Oaks Proposals, submitted by the Delegation of the Dominion Republic on March 1, 1945, to the Inter-American Conference.

GUATEMALA

Observations of the Guatemalan Government Regarding the Proposal for the Establishment of a General International Organization for the Maintenance of Peace and Security in the World, transmitted to the United States Government on November 14, 1944

Memorandum on Dumbarton Oaks Proposals, submitted by the Delegation of Guatemala to the Inter-American Conference

HONDURAS

Memorandum of the Government of Honduras to the United States Government, concerning the Proposals for the Organization of World Peace and Security, dated January 1945

Memorandum concerning the Proposals for the Organization for the World Peace and Security,

submitted

submitted by the Delegation of Honduras to the Inter-American Conference

INFORMAL INTER-ALLIED COMMITTEE
ON THE FUTURE OF THE PERMANENT
COURT OF INTERNATIONAL JUSTICE

Report of the Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice, dated February 10, 1944

INTER-AMERICAN CONFERENCE
ON PROBLEMS OF WAR AND PEACE
(February 21-March 8, 1945,
Mexico City, Mexico)

Resolution XXX, "On Establishment of a General International Organization," Final Act of the Conference

INTER-AMERICAN JURIDICAL COMMITTEE

The Dumbarton Oaks Proposals: Preliminary Comments and Recommendations of the Inter-American Juridical Committee, December 8, 1944

MEXICO

Opinion of the Department of Foreign Relations of Mexico concerning the Dumbarton Oaks Proposals for the Creation of a General International Organization, transmitted to the United States Government on September 5, 1944

Memorandum on the Dumbarton Oaks Proposals, transmitted by the Mexican Government to the United States Government on October 31, 1944

Synopsis of Essential Observations Made by the Mexican Delegation on the Dumbarton Oaks Proposals, submitted to the Inter-American Conference

THE NETHERLANDS

THE NETHERLANDS

Suggestions Presented by the Netherlands Government concerning the Proposals for the Maintenance of Peace and Security Agreed on at the Four-Power Conference of Dumbarton Oaks as Published on October 9, 1944: Memorandum to the United States Government dated January 1945

NORWAY

Preliminary study of the Dumbarton Oaks Proposals transmitted by the Norwegian Foreign Office to the United States Government on March 2, 1945

PANAMA

Statement of the Delegate of Panama submitted February 26, 1945 to the Inter-American Conference

PARAGUAY

Comments of the Chancellery of Paraguay on the Dumbarton Oaks Proposals to Constitute "The United Nations", transmitted to the United States Government on February 17, 1945

Summary of Remarks Presented by the Government of Paraguay on the Dumbarton Oaks Proposals, submitted by the Delegation of Paraguay on February 27, 1945 to the Inter-American Conference

PERU

Draft Resolution, "Jurisdiction of the International Court of Justice" (Conference Document No. 118), submitted by the Delegation of Peru to the Inter-American Conference

URUGUAY

The Position of the Government of Uruguay with respect to Plans for a Post-War International Organization for the Maintenance of World Peace

and

and Security, Memorandum transmitted to the United States Government on September 28, 1944

Summary of the Viewpoints of the Delegation of Uruguay on the Post-War International Organization, Draft Resolution submitted to the Inter-American Conference

VENEZUELA

Observations of the Government of Venezuela on the Recommendations Adopted at the Dumbarton Oaks Conference for the Creation of a Peace Organization, Memorandum dated October 31, 1944 and transmitted to the United States Government

Summary of Comments of the Government of Venezuela of the Dumbarton Oaks Plan, submitted by the Delegation of Venezuela to the Inter-American Conference

Draft Resolution, "Bases for the Organization of the Court of International Justice" (Conference Document No. 80), submitted by the Delegation of Venezuela to the Inter-American Conference

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BUILDING THE PEACE

The United Nations

Dumbarton Oaks Proposals
for a
General International Organization

To be the subject of
THE UNITED NATIONS CONFERENCE *at San Francisco, April 25, 1945*

THERE SHOULD be established an international organization under the title of The United Nations, the Charter of which should contain provisions necessary to give effect to the proposals which follow.

Chapter I. Purposes

The purposes of the Organization should be:

1. To maintain international peace and security; and to that end to take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means adjustment or settlement of international disputes which may lead to a breach of the peace;

2. To develop friendly relations among nations and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in the solution of international economic, social and other humanitarian problems; and

4. To afford a center for harmonizing the actions of nations in the achievement of these common ends.

Chapter II. Principles

In pursuit of the purposes mentioned in Chapter I the Organization and its members should act in accordance with the following principles:

1. The Organization is based on the principle of the sovereign equality of all peace-loving states.

2. All members of the Organization undertake, in order to ensure to all of them the rights and benefits resulting from membership in the Organization, to fulfill the obligations assumed by them in accordance with the Charter.

3. All members of the Organization shall settle their disputes by peaceful means in such a manner that international peace and security are not endangered.

4. All members of the Organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization.

5. All members of the Organization shall give every assistance to the Organization in any action undertaken by it in accordance with the provisions of the Charter.

6. All members of the Organization shall refrain from giving assistance to any state against which preventive or enforcement action is being undertaken by the Organization.

The Organization should ensure that states not members of the Organization act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

Chapter III. Membership

1. Membership of the Organization should be open to all peace-loving states.

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Chapter IV. Principal Organs

1. The Organization should have as its principal organs:

a. A General Assembly;

b. A Security Council;

c. An international court of justice; and

d. A Secretariat.

2. The Organization should have such subsidiary agencies as may be found necessary.

Chapter V. The General Assembly

Section A. Composition. All members of the Organization should be members of the General Assembly and should have a number of representatives to be specified in the Charter.

Section B. Functions and powers. 1. The General Assembly should have the right to consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments; to discuss any questions relating to the maintenance of international peace and security brought before it by any member or members of the Organization or by the Security Council; and to make recommendations with regard to any such principles or questions. Any such questions on which action is necessary should be referred to the Security Council by the General Assembly either before or after discussion. The General Assembly should not on its own initiative make recommendations on any matter relating to the maintenance of international peace and security which is being dealt with by the Security Council.

2. The General Assembly should be empowered to admit new members to the Organization upon recommendation of the Security Council.

3. The General Assembly should, upon recommendation of the Security Council, be empowered to suspend from the exercise of any rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council. The exercise of the rights and privileges thus suspended may be restored by decision of the Security Council. The General Assembly should be empowered, upon recommendation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter.

4. The General Assembly should elect the nonpermanent members of the Security Council and the members of the Economic and Social Council provided for in Chapter IX. It should be empowered to elect, upon recommendation of the Security Council, the Secretary-General of the Organization. It should perform such functions in relation to the election of the judges of the international court of justice as may be conferred upon it by the statute of the court.

5. The General Assembly should apportion the expenses among the members of the Organization and should be empowered to approve the budgets of the Organization.

6. The General Assembly should initiate studies and make recommendations for the purpose of promoting international cooperation in political, economic and social fields and of adjusting situations likely to impair the general welfare.

7. The General Assembly should make recommendations for the coordination of the policies of international economic, social, and other specialized agencies brought into relation with the Organization in accordance with agreements between such agencies and the Organization.

8. The General Assembly should receive and consider annual and special reports from the Security Council and reports from other bodies of the Organization.

Section C. Voting. 1. Each member of the Organization should have one vote in the General Assembly.

2. Important decisions of the General Assembly, including recommendations with respect to the maintenance of international peace and security; election of members of the Security Council; election of members of the Economic and Social Council; admission of members, suspension of the exercise of the rights and privileges of members, and expulsion of members; and budgetary questions, should be made by a two-thirds majority of those present and voting. On other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, the decisions of the General Assembly should be made by a simple majority vote.

Section D. Procedure. 1. The General Assembly should meet in regular annual sessions and in such special sessions as occasion may require.

2. The General Assembly should adopt its own rules of procedure and elect its President for each session.

3. The General Assembly should be empowered to set up such bodies and agencies as it may deem necessary for the performance of its functions.

Chapter VI. The Security Council

Section A. Composition. The Security Council should consist of one representative of each of eleven members of the Organization. Representatives of the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Republic of China, and, in due course, France, should have permanent seats. The General Assembly should elect six states to fill the non-permanent seats. These six states should be elected for a term of two years, three retiring each year. They should not be immediately eligible for reelection. In the first election of the non-permanent members three should be chosen by the General Assembly for one-year terms and three for two-year terms.

SECTION B. PRINCIPAL FUNCTIONS AND POWERS. 1. In order to ensure prompt and effective action by the Organization, members of the Organization should by the Charter confer on the Security Council primary responsibility for the maintenance of international peace and security and should agree that in carrying out these duties under this responsibility it should act on their behalf.

2. In discharging these duties the Security Council should act in accordance with the purposes and principles of the Organization.

3. The specific powers conferred on the Security Council in order to carry out these duties are laid down in Chapter VIII.

4. All members of the Organization should obligate themselves to accept the decisions of the Security Council and to carry them out in accordance with the provisions of the Charter.

5. In order to promote the establishment and maintenance of international peace and security with the least diversion of the world's human and economic resources for armaments, the Security Council, with the assistance of the Military Staff Committee referred to in Chapter VIII, Section B, paragraph 9, should have the responsibility for formulating plans for the establishment of a system of regulation of armaments for submission to the members of the Organization.

[Here follows the text of Section C as proposed at the Crimea Conference:]

SECTION C. VOTING. 1. Each member of the Security Council should have one vote.

2. Decisions of the Security Council on procedural matters should be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all other matters should be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VIII, Section A, and under the second sentence of Paragraph 1 of Chapter VIII, Section C, a party to a dispute should abstain from voting.

SECTION D. PROCEDURE. 1. The Security Council should be so organized as to be able to function continuously and each state member of the Security Council should be permanently represented at the headquarters of the Organization. It may hold meetings at such other places as in its judgment may best facilitate its work. There should be periodic meetings at which each state member of the Security Council could if it so desired be represented by a member of the government or some other special representative.

2. The Security Council should be empowered to set up such bodies or agencies as it may deem necessary for the performance of its functions including regional subcommittees of the Military Staff Committee.

3. The Security Council should adopt its own rules of procedure, including the method of selecting its President.

4. Any member of the Organization should participate in the discussion of any question brought before the Security Council whenever the Security Council considers that the interests of that member of the Organization are specially affected.

5. Any member of the Organization not having a seat on the Security Council and any state not a member of the Organization, if it is a party to a dispute under consideration by the Security Council, should be invited to participate in the discussion relating to the dispute.

Chapter VII. An International Court of Justice

1. There should be an international court of justice which should constitute the principal judicial organ of the Organization.

2. The court should be constituted and should function in accordance with a statute which should be annexed to and be a part of the Charter of the Organization.

3. The statute of the court of international justice should be either (a) the Statute of the Permanent Court of International Justice, continued in force with such modifications as may be desirable or (b) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis.

4. All members of the Organization should *ipso facto* be parties to the statute of the international court of justice.

5. Conditions under which states not members of the Organization may become parties to the statute of the international court of justice should be deter-

THE UNITED NATIONS

AN ORGANIZATION FOR PEACE AND WORLD PROGRESS

ENCOURAGES NATIONS TO COOPERATE

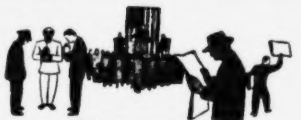
Seeks solutions to pressing political, economic, and social problems and helps nations to cooperate in solving them.

PROMOTES PROSPERITY

Helps nations work together for post-war reconstruction, increased trade, dependable money, and economic development.

ADVANCES SOCIAL PROGRESS

Helps nations to raise standards of living, health, and education to achieve a richer life for all.

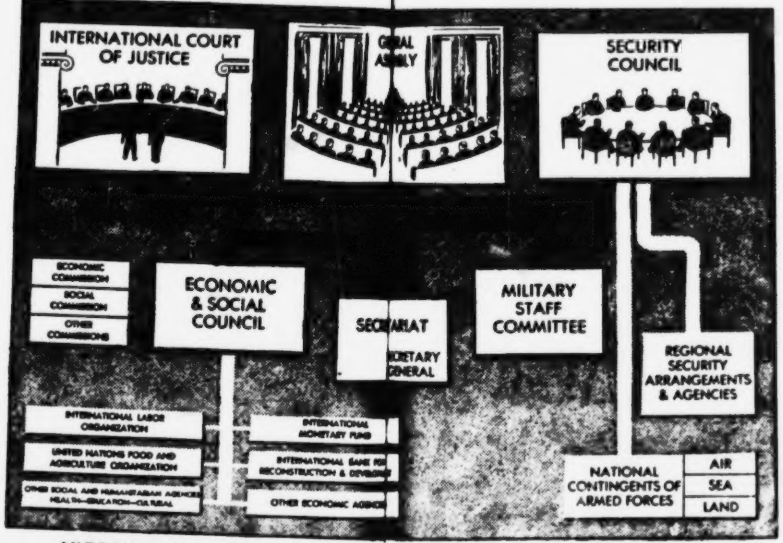


FOSTERS FREEDOMS

Cultivates respect for human rights and fundamental freedoms, to insure the free flow of knowledge essential to material and spiritual growth.

COORDINATES INTERNATIONAL AGENCIES

Assures coordination and cooperation among the international organizations working on vital problems.


INTERNATIONAL COURT OF JUSTICE
GENERAL ASSEMBLY
SECURITY COUNCIL
ECONOMIC COMMISSION
SOCIAL COMMISSION
OTHER COMMISSIONS
ECONOMIC & SOCIAL COUNCIL
SECRETARIAT
SECRETARY GENERAL
MILITARY STAFF COMMITTEE
REGIONAL SECURITY ARRANGEMENTS & AGENCIES
INTERNATIONAL LABOR ORGANIZATION
UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION
OTHER SOCIAL AND HUMANITARIAN AGENCIES HEALTH—EDUCATION—CULTURAL
INTERNATIONAL MONETARY FUND
INTERNATIONAL BANK FOR RECONSTRUCTION & DEVELOPMENT
OTHER ECONOMIC AGENCIES
NATIONAL CONTINGENTS OF ARMED FORCES
AIR
SEA
LAND

INTERNATIONAL ORGANIZATION PROPOSED AT DUMBARTON OAKS

The Proposals were recommended to their governments by the representatives of the United States, Great Britain, USSR, and China and released on October 9, 1944. They are offered for full discussion by the governments and peoples of the United Nations.

INVESTIGATES DISPUTES BETWEEN NATIONS

Finds out about differences or disputes between nations that might lead to international friction or cause a threat to the peace.

SEEKS PEACEFUL SETTLEMENTS

Urges nations to settle their disputes by peaceful means, including appeal to the International Court of Justice.

DECIDES ON MEASURES TO KEEP THE PEACE

Security Council decides what steps should be taken if a dispute continues and war is threatened.

TAKES POLITICAL AND ECONOMIC ACTION

Cuts off trade, communication and diplomatic relations with nations threatening the peace. Member nations cooperate as requested.

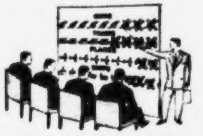
TAKES MILITARY ACTION

As a last resort, uses armed contingents of United Nations to keep or restore the peace. Military Staff Committee advises on best use of force.

ADMITS NEW MEMBERS TO UNITED NATIONS

Brings in new member nations and, if necessary in the interests of peace, expels members or suspends their rights and privileges.

FOR FURTHER INFORMATION
ASK YOUR LIBRARIAN



MAKES PLANS TO CONTROL ARMAMENTS

Elaborates plans for the regulation and limitation of armaments.

mined in each case by the General Assembly upon recommendation of the Security Council.

Chapter VIII. Arrangements for the Maintenance of International Peace and Security Including Prevention and Suppression of Aggression

SECTION A. PACIFIC SETTLEMENT OF DISPUTES. 1. The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.

2. Any state, whether member of the Organization or not, may bring any such dispute or situation to the attention of the General Assembly or of the Security Council.

3. The parties to any dispute the continuance of which is likely to endanger the maintenance of international peace and security should obligate themselves, first of all, to seek a solution by negotiation, mediation, conciliation, arbitration or judicial settlement, or other peaceful means of their own choice. The Security Council should call upon the parties to settle their dispute by such means.

4. If, nevertheless, parties to a dispute of the nature referred to in paragraph 3 above fail to settle it by the means indicated in that paragraph, they should obligate themselves to refer it to the Security Council. The Security Council should in each case decide whether or not the continuance of the particular dispute is in fact likely to endanger the maintenance of international peace and security, and, accordingly, whether the Security Council should deal with the dispute, and, if so, whether it should take action under paragraph 5.

5. The Security Council should be empowered, at any stage of a dispute of the nature referred to in paragraph 3 above, to recommend appropriate procedures or methods of adjustment.

6. Justiciable disputes should normally be referred to the international court of justice. The Security Council should be empowered to refer to the court, for advice, legal questions connected with other disputes.

7. The provisions of paragraph 1 to 6 of Section A should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned.

SECTION B. DETERMINATION OF THREATS TO THE PEACE OR ACTS OF AGGRESSION AND ACTION WITH RESPECT THERETO. 1. Should the Security Council deem that a failure to settle a dispute in accordance with procedures indicated in paragraph 3 of Section A, or in accordance with its recommendations made under paragraph 5 of Section A, constitutes a threat to the maintenance of international peace and security, it should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization.

2. In general the Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression and should make recommendations or decide upon the measures to be taken to maintain or restore peace and security.

3. The Security Council should be empowered to determine what diplomatic, economic, or other measures not involving the use of armed force should be employed to give effect to its decisions, and to call upon members of the Organization to apply such measures. Such measures may include complete or partial interruption of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic and economic relations.

4. Should the Security Council consider such measures to be inadequate, it should be empowered to take such action by air, naval or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea or land forces of members of the Organization.

5. In order that all members of the Organization should contribute to the maintenance of international peace and security, they should undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements concluded among themselves, armed forces, facilities and assistance necessary for the purpose of maintaining international peace and security. Such agreement or agreements should govern the numbers and types of forces and the nature of the facilities and assistance to be provided. The special agreement or agreements should be negotiated as soon as possible and should in each case be subject to approval by the Security Council and to ratification by the signatory states in accordance with their constitutional processes.

6. In order to enable urgent military measures to be taken by the Organization there should be held immediately available by the members of the Organization national air force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action should be determined by the Security Council with the assistance of

the Military Staff Committee within the limits laid down in the special agreement or agreements referred to in paragraph 5 above.

7. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security should be taken by all the members of the Organization in cooperation or by some of them as the Security Council may determine. This undertaking should be carried out by the members of the Organization by their own action and through action of the appropriate specialized organizations and agencies of which they are members.

8. Plans for the application of armed force should be made by the Security Council with the assistance of the Military Staff Committee referred to in paragraph 9 below.

9. There should be established a Military Staff Committee the functions of which should be to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, to the employment and command of forces placed at its disposal, to the regulation of armaments, and to possible disarmament. It should be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. The Committee should be composed of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any member of the Organization not permanently represented on the Committee should be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires that such a state should participate in its work. Questions of command of forces should be worked out subsequently.

10. The members of the Organization should join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

11. Any state, whether a member of the Organization or not, which finds itself confronted with special economic problems arising from the carrying out of measures which have been decided upon by the Security Council should have the right to consult the Security Council in regard to a solution of those problems.

SECTION C. REGIONAL ARRANGEMENTS. 1. Nothing in the Charter should preclude the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the purposes and principles of the Organization. The Security Council should encourage settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the states concerned or by reference from the Security Council.

2. The Security Council should, where appropriate, utilize such arrangements or agencies for enforcement action under its authority, but no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

3. The Security Council should at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Chapter IX. Arrangements for International Economic and Social Cooperation

SECTION A. PURPOSE AND RELATIONSHIPS. 1. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms. Responsibility for the discharge of this function should be vested in the General Assembly and, under the authority of the General Assembly, in an Economic and Social Council.

2. The various specialized economic, social and other organizations and agencies would have responsibilities in their respective fields as defined in their statutes. Each such organization or agency should be brought into relationship with the Organization on terms to be determined by agreement between the Economic and Social Council and the appropriate authorities of the specialized organization or agency, subject to approval by the General Assembly.

SECTION B. COMPOSITION AND VOTING. The Economic and Social Council should consist of representatives of eighteen members of the Organization. The states to be represented for this purpose should be elected by the General Assembly for terms of three years. Each such state should have one representative, who should have one vote. Decisions of the Economic and Social Council should be taken by simple majority vote of those present and voting.

SECTION C. FUNCTIONS AND POWERS OF THE ECONOMIC AND SOCIAL COUNCIL. 1. The Economic and Social Council should be empowered:

a. to carry out, within the scope of its functions, recommendations of the General Assembly;

- b. to make recommendations, on its own initiative, with respect to international economic, social and other humanitarian matters;
- c. to receive and consider reports from the economic, social and other organizations or agencies brought into relationship with the Organization, and to coordinate their activities through consultations with, and recommendations to, such organizations or agencies;
- d. to examine the administrative budgets of such specialized organizations or agencies with a view to making recommendations to the organizations or agencies concerned;
- e. to enable the Secretary-General to provide information to the Security Council;
- f. to assist the Security Council upon its request; and
- g. to perform such other functions within the general scope of its competence as may be assigned to it by the General Assembly.

SECTION D. ORGANIZATION AND PROCEDURE. 1. The Economic and Social Council should set up an economic commission, a social commission, and such other commissions as may be required. These commissions should consist of experts. There should be a permanent staff which should constitute a part of the Secretariat of the Organization.

2. The Economic and Social Council should make suitable arrangements for representatives of the specialized organizations or agencies to participate without vote in its deliberations and in those of the commissions established by it.

3. The Economic and Social Council should adopt its own rules of procedure and the method of selecting its President.

Chapter X. The Secretariat

1. There should be a Secretariat comprising a Secretary-General and such staff as may be required. The Secretary-General should be the chief administrative officer of the Organization. He should be elected by the General Assembly, on recommendation of the Security Council, for such term and under such conditions as are specified in the Charter.

2. The Secretary-General should act in that capacity in all meetings of the General Assembly, of the Security Council, and of the Economic and Social Council and should make an annual report to the General Assembly on the work of the Organization.

3. The Secretary-General should have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security.

Chapter XI. Amendments

Amendments should come into force for all members of the Organization, when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the members of the Organization having permanent membership on the Security Council and by a majority of the other members of the Organization.

Chapter XII. Transitional Arrangements

1. Pending the coming into force of the special agreement or agreements referred to in Chapter VIII, Section B, paragraph 5, and in accordance with the provisions of paragraph 5 of the Four-Nation Declaration, signed at Moscow, October 30, 1943, the states parties to that Declaration should consult with one another and as occasion arises with other members of the Organization with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

2. No provision of the Charter should preclude action taken or authorized in relation to enemy states as a result of the present war by the Governments having responsibility for such action.

Note

In addition to the question of voting procedure in the Security Council referred to in Chapter VI, several other questions are still under consideration.

WASHINGTON, D. C.

October 7, 1944 [Released October 9, 1944]

Jurists 3
G/3
April 6, 1945

(2) STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE1/

ARTICLE I. Indépendamment de la Cour d'Arbitrage, organisée par les Conventions de La Haye de 1899 et 1907, et des Tribunaux spéciaux d'Arbitres, auxquels les Etats demeurent toujours libres de confier la solution de leurs différends, il est institué, conformément à l'article 14 du Pacte de la Société des Nations, une Cour permanente de Justice internationale.

CHAPITRE I

ORGANISATION DE LA COUR

ART. 2. La Cour permanente de Justice internationale est un corps de magistrats indépendants, élus, sans égard à leur nationalité, parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international.

ART. 3. La Cour se compose de quinze membres.

ART. 4. Les membres de la Cour sont élus par l'Assemblée et par le Conseil sur une liste de personnes présentées par les groupes nationaux de la Cour d'Arbitrage, conformément aux dispositions suivantes.

En ce qui concerne les Membres de la Société qui ne sont pas représentés à la Cour permanente d'Arbitrage, les listes de candidats seront présentées par des groupes nationaux, désignés à cet effet par leurs gouvernements, dans les mêmes conditions que celles stipulées pour les

membres

1/ As in force since February 1, 1936.
The English text is also authoritative.

membres de la Cour d'Arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.

En l'absence d'accord spécial, l'Assemblée, sur la proposition du Conseil, réglera les conditions auxquelles peut participer à l'élection des membres de la Cour un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre de la Société des Nations.

ART. 5. Trois mois au moins avant la date de l'élection, le Secrétaire général de la Société des Nations invite par écrit les membres de la Cour d'Arbitrage appartenant aux Etats mentionnés à l'annexe au Pacte ou entrés ultérieurement dans la Société des Nations, ainsi que les personnes désignées conformément à l'alinéa 2 de l'article 4, à procéder dans un délai déterminé par groupes nationaux à la présentation de personnes en situation de remplir les fonctions de membre de la Cour.

Chaque groupe ne peut, en aucun cas, présenter plus de quatre personnes, dont deux au plus de sa nationalité. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

ART. 6. Avant de procéder à cette désignation, il est recommandé à chaque groupe national de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

ART. 7. Le Secrétaire général de la Société des Nations dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées: seules ces personnes sont éligibles, sauf le cas prévu à l'article 12, paragraphe 2.

Le Secrétaire général communique cette liste à l'Assemblée et au Conseil.

ART. 8. L'Assemblée et le Conseil procèdent indépendamment l'un de l'autre à l'élection des membres de la Cour.

ART. 9. Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour,

non

non seulement réunissent individuellement les conditions requises, mais assurent dans l'ensemble la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde.

ART. 10. Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée et dans le Conseil.

Au cas où le double scrutin de l'Assemblée et du Conseil se porterait sur plus d'un ressortissant du même Membre de la Société des Nations, le plus âgé est seul élu.

ART. 11. Si, après la première séance d'élection, il reste encore des sièges à pourvoir, il est procédé, de la même manière, à une seconde et, s'il est nécessaire, à une troisième.

ART. 12. Si, après la troisième séance d'élection, il reste encore des sièges à pourvoir, il peut être à tout moment formé sur la demande, soit de l'Assemblée, soit du Conseil, une Commission médiatrice de six membres, nommés trois par l'Assemblée, trois par le Conseil, en vue de choisir pour chaque siège non pourvu un nom à présenter à l'adoption séparée de l'Assemblée et du Conseil.

Peuvent être portées sur cette liste, à l'unanimité, toutes personnes satisfaisant aux conditions requises, alors même qu'elles n'auraient pas figuré sur la liste de présentation visée aux articles 4 et 5.

Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les membres de la Cour déjà nommés pourvoient aux sièges vacants, dans un délai à fixer par le Conseil, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée, soit dans le Conseil.

Si parmi les juges il y a partage égal des voix, la voix du juge le plus âgé l'emporte.

ART. 13. Les membres de la Cour sont élus pour neuf ans.

Ils sont rééligibles.

Ils

Ils restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire général de la Société des Nations.

Cette dernière notification emporte vacance de siège.

ART. 14. Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire général de la Société des Nations procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil dans sa première session.

ART. 15. Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

ART. 16. Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

En cas de doute, la Cour décide.

ART. 17. Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

En cas de doute, la Cour décide.

ART. 18. Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

Le Secrétaire général de la Société des Nations en est officiellement informé par le Greffier.

Cette communication emporte vacance de siège.

ART. 19. Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

ART. 20. Tout membre de la Cour doit, avant d'entrer en fonction, en séance publique, prendre engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

ART. 21. La Cour élit, pour trois ans, son Président et son Vice-Président; ils sont rééligibles.

Elle nomme son Greffier.

La fonction de Greffier de la Cour n'est pas incompatible avec celle de Secrétaire général de la Cour permanente d'Arbitrage.

ART. 22. Le siège de la Cour est fixé à La Haye.

Le Président et le Greffier résident au siège de la Cour.

ART. 23. La Cour reste toujours en fonction, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

Les membres de la Cour dont les foyers se trouvent à plus de cinq jours de voyage normal de La Haye auront droit, indépendamment des vacances judiciaires, à un congé de six mois, non compris la durée des voyages, tous les trois ans.

Les membres de la Cour sont tenus, à moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

ART. 24. Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

ART. 25. Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

Toutefois, le quorum de neuf est suffisant pour constituer la Cour.

ART. 26. Pour les affaires concernant le travail, et spécialement pour les affaires visées dans la Partie XIII (Travail) du Traité de Versailles et les parties correspondantes des autres traités de paix, la Cour statuera dans les conditions ci-après:

La Cour constituera pour chaque période de trois années une chambre spéciale composé de cinq juges désignés en tenant compte, autant que possible, des prescriptions de l'article 9. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger. Sur la demande des parties, cette Chambre statuera. A défaut de cette demande, la Cour siégera en séance plénière. Dans les deux cas, les juges sont assistés de quatre assesseurs techniques siégeant à leurs côtés avec voix consultative et assurant une juste représentation des intérêts en cause.

Les assesseurs techniques sont choisis dans chaque cas spécial d'après les règles de procédure visées à l'article 30, sur une liste d'"Assesseurs pour litiges de travail", composée de noms présentés à raison de deux par chaque Membre de la Société des Nations et d'un nombre égal présenté par le Conseil d'administration du Bureau International du Travail. Le Conseil désignera par moitié

des

des représentants des travailleurs et par moitié des représentants des patrons pris sur la liste prévue à l'article 412 du Traité de Versailles et aux articles correspondants des autres traités de paix.

Le recours à la procédure sommaire visée à l'article 29 reste toujours ouvert dans les affaires visées à l'alinéa premier du présent article, si les parties le demandent.

Dans les affaires concernant le travail, le Bureau international aura la faculté de fournir à la Cour tous les renseignements nécessaires et, à cet effet, le Directeur de ce Bureau recevra communication de toutes les pièces de procédure présentées par écrit.

ART. 27. Pour les affaires concernant le transit et les communications, et spécialement pour les affaires visées dans la Partie XII (Ports, Voies d'eau, Voies ferrées) du Traité de Versailles et les parties correspondantes des autres traités de paix, la Cour statuera dans les conditions ci-après:

La Cour constituera, pour chaque période de trois années, une Chambre spéciale composée de cinq juges désignés en tenant compte autant que possible des prescriptions de l'article 9. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger. Sur la demande des parties, cette Chambre statuera. A défaut de cette demande, la Cour siégera en séance plénière. Si les parties le désirent, ou si la Cour le décide, les juges seront assistés de quatre assesseurs techniques siégeant à leurs côtés avec voix consultative.

Les assesseurs techniques seront choisis dans chaque cas spécial d'après les règles de procédure visées à l'article 30, sur une liste d'"Assesseurs pour litiges de transit et de communications", composée de noms présentés à raison de deux par chaque Membre de la Société des Nations.

Le recours à la procédure sommaire visée à l'article 29 reste toujours ouvert dans les affaires visées à l'alinéa premier du présent article, si les parties le demandent.

ART. 28. Les chambres spéciales prévues aux articles 26 et 27 peuvent, avec le consentement des parties en cause, siéger ailleurs qu'à La Haye.

ART. 29. En vue de la prompte expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelés à statuer en procédure sommaire lorsque les parties le demandent. Deux juges seront, en outre, désignés, pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger.

ART. 30. La Cour détermine par un règlement le mode suivant lequel elle exerce ses attributions. Elle règle notamment la procédure sommaire.

ART. 31. Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

Si la Cour compte sur le siège un juge de la nationalité d'une des parties, l'autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d un juge de la même manière qu'au paragraphe précédent.

La présente disposition s'applique dans le cas des articles 26, 27 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

Les juges désignés, comme il est dit aux paragraphes 2, 3 et 4 du présent article, doivent satisfaire aux prescriptions des articles 2; 17, alinéa 2; 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

ART. 32.

ART. 32. Les membres de la Cour reçoivent un traitement annuel.

Le Président reçoit une allocation annuelle spéciale.

Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

Ces traitements, allocations et indemnités sont fixés par l'Assemblée de la Société des Nations sur la proposition du Conseil. Ils ne peuvent être diminués pendant la durée des fonctions.

Le traitement du Greffier est fixé par l'Assemblée sur la proposition de la Cour.

Un règlement adopté par l'Assemblée fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

Les traitements, indemnités et allocations sont exempts de tout impôt.

ART. 33. Les frais de la Cour sont supportés par la Société des Nations de la manière que l'Assemblée décide sur la proposition du Conseil.

CHAPITRE II

COMPETENCE DE LA COUR

ART. 34. Seuls les Etats ou les Membres de la Société des Nations ont qualité pour se présenter devant la Cour.

ART. 35. La Cour est ouverte aux Membres de la Société des Nations, ainsi qu'aux Etats mentionnés à l'annexe au Pacte.

Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des

traités

traités en vigueur, réglées par le Conseil, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

Lorsqu'un Etat, qui n'est pas Membre de la Société des Nations est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

ART 36. La compétence de la Cour s'étend à toutes affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans les traités et conventions en vigueur.

Les Membres de la Société et Etats mentionnés à l'annexe au Pacte pourront, soit lors de la signature ou de la ratification du Protocole, auquel le présent Acte est joint, soit ultérieurement, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou Etat acceptant la même obligation, la juridiction de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:

(a) l'interprétation d'un traité;

(b) tout point de droit international;

(c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;

(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

ART. 37. Lorsqu'un traité ou convention en vigueur

vise

vise le renvoi à une juridiction à établir par la Société des Nations, la Cour constituera cette juridiction.

ART. 38. La Cour applique:

1. Les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige;

2. La coutume internationale comme preuve d'une pratique générale acceptée comme étant le droit;

3. Les principes généraux de droit reconnus par les nations civilisées;

4. Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

La présente disposition ne porte pas atteinte à la faculté pour la Cour, si les parties sont d'accord, de statuer ex aequo et bono

CHAPITRE III

PROCÉDURE

ART. 39. Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

La Cour pourra, à la demande de toute partie, autoriser l'emploi d'une langue autre que le français ou l'anglais.

ART. 40

ART. 40. Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffe; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

Le Greffe donne immédiatement communication de la requête à tous intéressés.

Il en informe également les Membres de la Société des Nations par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

ART. 41. La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil.

ART. 42. Les parties sont représentées par des agents.

Elles peuvent se faire assister devant la Cour par des Conseils ou des avocats.

ART. 43. La proc'dure a deux phases: l'une écrite, l'autre orale.

La procédure écrite comprend la communication à juge et à partie des mémoires, des contre-mémoires, et éventuellement, des répliques, ainsi que de toute pièce et document à l'appui.

La communication se fait par l'entremise du Greffe dans l'ordre et les délais déterminés par la Cour.

Toute pièce produite par l'une des parties doit être communiquée à l'autre en copie certifiée conforme.

La procédure orale consiste dans l'audition par la Cour des témoins experts, agents, conseils et avocats.

ART. 44. Pour toute notification à faire à d'autres personnes que les agents, conseils et avocats, la Cour

s'adresse

s'adresse directement au gouvernement de l'Etat sur le territoire duquel la notification doit produire effet.

Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

ART. 45. Les débats sont dirigés par le Président et à défaut de celui-ci par le Vice-Président; en cas d'empêchement, par le plus ancien des juges présents.

ART. 46. L'audience est publique, à moins qu'il n'en soit autrement décidé par la Cour ou que les deux parties ne demandent que le public ne soit pas admis.

ART. 47. Il est tenu de chaque audience un procès-verbal signé par le Greffier et le Président.

Ce procès-verbal a seul caractère authentique.

ART. 48. La Cour rend des ordonnances pour la direction du procès, la détermination des formes et délais dans lesquels chaque partie doit finalement conclure; elle prend toutes les mesures que comporte l'administration des preuves.

ART. 49. La Cour peut, même avant tout débat, demander aux agents de produire tout document et de fournir toutes explications. En cas de refus, elle en prend acte.

ART. 50. A tout moment, la Cour peut confier une enquête ou une expertise à toute personne, corps, bureau, commission ou organe de son choix.

ART. 51. Au cours des débats, toutes questions utiles sont posées aux témoins et experts dans les conditions que fixera la Cour dans le règlement visé à l'article 30.

ART. 52. Après avoir reçu les preuves et témoignages dans les délais déterminés par elle, la Cour peut écarter toutes dépositions ou documents nouveaux qu'une des parties voudrait lui présenter sans l'assentiment de l'autre.

ART. 53. Lorsqu'une des parties ne se présente pas, ou s'abstient de faire valoir ses moyens, l'autre partie peut demander à la Cour de lui adjuger ses conclusions.

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La Cour, avant d'y faire droit, doit s'assurer non seulement qu'elle a compétence aux termes des articles 36 et 37, mais que les conclusions sont fondées en fait et en droit.

ART. 54. Quand les agents, avocats et conseils ont fait valoir, sous le contrôle de la Cour, tous les moyens qu'ils jugent utiles, le Président prononce la clôture des débats.

La Cour se retire en Chambre du Conseil pour délibérer.

Les délibérations de la Cour sont et restent secrètes.

ART. 55. Les décisions de la Cour sont prises à la majorité des juges présents.

En cas de partage de voix, la voix du Président ou de celui qui le remplace est prépondérante.

ART. 56. L'arrêt est motivé.

Il mentionne les noms des juges qui y ont pris part.

ART. 57. Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, les dissidents ont le droit d'y joindre l'exposé de leur opinion individuelle.

ART. 58. L'arrêt est signé par le Président et par le Greffier. Il est lu en séance publique, les agents dûment prévenus.

ART. 59. La décision de la Cour n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé.

ART. 60. L'arrêt est définitif et sans recours. En cas de contestation sur le sens et la portée de l'arrêt, il appartient à la Cour de l'interpréter, à la demande de toute partie.

ART. 61. La revision de l'arrêt ne peut être éventuellement demandée à la Cour qu'à raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, était inconnu de la Cour et de la partie qui demande la revision, sans qu'il y ait, de sa part, faute à l'ignorer.

La

La procédure de revision s'ouvre par un arrêt de la Cour constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la revision, et déclarant de ce chef la demande recevable.

La Cour peut subordonner l'ouverture de la procédure en revision à l'exécution préalable de l'arrêt.

La demande en revision devra être formée au plus tard dans le délai de six mois après la découverte du fait nouveau.

Aucune demande de revision ne pourra être formée après l'expiration d'un délai de dix ans à dater de l'arrêt.

ART. 62. Lorsqu'un Etat estime que dans un différend un intérêt d'ordre juridique est pour lui en cause, il peut adresser à la Cour une requête, à fin d'intervention.

La Cour décide.

ART. 63. Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffe les avertit sans délai.

Chacun d'eux a le droit d'intervenir au procès, et s'il exerce cette faculté, l'interprétation contenue dans la sentence est également obligatoire à son égard.

ART. 64. S'il n'en est autrement décidé par la Cour, chaque partie supporte ses frais de procédure.

CHAPITRE IV

AVIS CONSULTATIFS

ART. 65. Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par le président de l'Assemblée ou par le président du Conseil de la Société des Nations, soit par le Secrétaire général de la Société agissant en vertu d'instructions de l'Assemblée ou du Conseil.

La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

ART. 66.

ART. 66.--1. Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres de la Société des Nations par l'entremise du Secrétaire général de la Société, ainsi qu'aux Etats admis à ester en justice devant la Cour.

En outre, à tout Membre de la Société, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siège pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

Si un des Membres de la Société ou des Etats mentionnés au premier alinéa du présent paragraphe, n'ayant pas été l'objet de la communication spéciale ci-dessus visée, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

2. Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

ART. 67. La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire général de la Société des Nations et les représentants des Membres de la Société, des Etats et des organisations internationales directement intéressés étant prévenus.

ART. 68. Dans l'exercice de ses attributions consultatives, la Cour s'inspirera en outre des dispositions du Statut qui s'appliquent en matière contentieuse, dans la mesure où elle les reconnaîtra applicables.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 12
G/9
April 10, 1945

CONVENTION FOR THE ESTABLISHMENT OF A CENTRAL AMERICAN COURT OF JUSTICE 1907 1/

Article I.

The High Contracting Parties agree by the present Convention to constitute and maintain a permanent tribunal which shall be called the "Central American Court of Justice," to which they bind themselves to submit all controversies or questions which may arise among them, of whatsoever nature and no matter what their origin may be, in case the respective Departments of Foreign Affairs should not have been able to reach an understanding.

Article II.

This court shall also take cognizance of the questions which individuals of one Central American country may raise against any of the other contracting Governments, because of the violation of treaties or conventions, and other cases of an international character; no matter whether their own Government supports said claim or not; and provided that the remedies which the laws of the respective country provide against such violation shall have been exhausted or that denial of justice shall have been shown.

Article III.

It shall also have jurisdiction over cases arising between any of the contracting Governments and individuals, when by common accord they are submitted to it. 2/

Article IV.

The Court can likewise take cognizance of the international questions which by special agreement any one of the Central American Governments and a foreign Government may have determined to submit to it.

1/ From 1907 U. S. Foreign Relations, part 2, pp. 697-701.
2/ Correct text of Article III as set forth in Additional Protocol.

4/6

Article V.

The Central American Court of Justice shall sit at the City of Cartago in the Republic of Costa Rica, but it may temporarily transfer its residence to another point in Central America whenever it deems it expedient for reasons of health, or in order to insure the exercise of its functions, or of the personal safety of its members.

Article VI.

The Central American Court of Justice shall consist of five Justices, one being appointed by each Republic and selected from among the jurists who possess the qualifications which the laws of each country prescribe for the exercise of high judicial office, and who enjoy the highest consideration, both because of their moral character and their professional ability.

Vacancies shall be filled by substitute Justices, named at the same time and in the same manner as the regular Justices and who shall unite the same qualifications as the latter.

The attendance of the five justices who constitute the Tribunal is indispensable in order to make a legal quorum in the decisions of the Court.

Article VII.

The Legislative Power of each one of the five contracting Republics shall appoint their respective Justices, one regular and two substitutes.

The salary of each Justice shall be eight thousand dollars, gold, per annum, which shall be paid them by the Treasury of the Court. The salary of the Justice of the country where the Court resides shall be fixed by the Government thereof. Furthermore each State shall contribute two thousand dollars, gold, annually toward the ordinary and extraordinary expenses of the Tribunal. The Governments of the contracting Republics bind themselves to include their respective contributions in their estimates of expenses and to remit quarterly in advance to the Treasury of the Court the share they may have to bear on account of such services.

Article VIII.

The regular and substitute Justices shall be appointed for a term of five years, which shall be counted from the day on which they assume the duties of their office, and they may be reelected.

In case of death, resignation, or permanent incapacity of any of them, the vacancy shall be filled by the respective Legislature, and the Justice elected shall complete the term of his predecessor.

Article IX.

The regular and substitute Justices shall take oath or make affirmation prescribed by law before the authority that may have appointed them, and from that moment they shall enjoy the immunities and prerogatives which the present Convention confers upon them. The regular Justices shall likewise enjoy thenceforth the salary fixed in Article VII.

Article X.

Whilst they remain in the country of their appointment the regular and substitute Justices shall enjoy the personal immunity which the respective laws grant to the magistrates of the Supreme Court of Justice, and in the other contracting Republics they shall have the privileges and immunities of Diplomatic Agents.

Article XI.

The office of Justice whilst held is incompatible with the exercise of his profession, and with the holding of public office. The same incompatibility applies to the substitute Justices so long as they may actually perform their duties.

Article XII.

At its first annual session the Court shall elect from among its own members a President and Vice-President; it shall organize the personnel of its office by designating a Clerk, a Treasurer, and such other subordinate employees as it may deem necessary, and it shall draw up the estimate of its expenses.

Article XIII.

The Central American Court of Justice represents the national conscience of Central America, wherefore the Justices who compose the Tribunal shall not consider themselves barred from the discharge of their duties because of the interest which the Republics, to which they owe their appointment, may have in any case or question. With regard to allegations of personal interest, the rules of procedure which the Court may fix shall make proper provision.

Article XIV.

When differences or questions subject to the jurisdiction of the Tribunal arise, the interested party shall present a complaint which shall comprise all the points of fact and law relative to the matter, and all pertinent evidence. The Tribunal shall communicate without loss of time a copy of the complaint to the Governments or individuals interested, and shall invite them to furnish their allegations and evidence within the term that it may designate to them, which, in no case, shall exceed sixty days counted from the date of notice of the complaint.

Article XV.

If the term designated shall have expired without answer having been made to the complaint, the Court shall require the complainant or complainants to do so within a further term not to exceed twenty days, after the expiration of which and in view of the evidence presented and of such evidence as it may ex officio have seen fit to obtain, the Tribunal shall render its decision in the case, which decision shall be final.

Article XVI.

If the Government, Governments, or individuals sued shall have appeared in time before the Court, presenting their allegations and evidence, the Court shall decide the matter within thirty days following, without further process or proceedings; but if a new term for the presentation of evidence be solicited, the Court shall decide whether or not there is occasion to grant it; and in the affirmative it shall fix therefor a reasonable time. Upon the expiration of such term, the Court shall pronounce its final judgment within thirty days.

Article XVII.

Each one of the Governments or individuals directly concerned in the questions to be considered by the Court has the right to be represented before it by a trustworthy person or persons, who shall present evidence, formulate arguments, and shall, within the terms fixed by this Convention and by the rules of the Court of Justice do everything that in their judgment shall be beneficial to the defense of the rights they represent.

Article XVIII.

From the moment in which any suit is instituted against any one or more governments up to that in which a final decision has been pronounced, the court may at the solicitation of any one of the parties fix the situation in which the contending parties must remain, to the end that the difficulty shall not be aggravated and that things shall be conserved in statu quo pending a final decision.

Article XIX.

For all the effects of this Convention the Central American Court of Justice may address itself to the Governments or tribunals of justice of the contracting States, through the medium of the Ministry of Foreign Relations or the office of the Clerk of the Supreme Court of Justice of the respective country, according to the nature of the requisite proceeding, in order to have the measures that it may dictate within the scope of its jurisdiction carried out.

Article XX.

It may also appoint special commissioners to carry out the formalities above referred to, when it deems it expedient for their better fulfillment. In such case, it shall ask of the Government where the proceeding is to be had, its cooperation and assistance, in order that the Commissioner may fulfill his mission. The contracting

Governments formerly bind themselves to obey and to enforce the orders of the Court, furnishing all the assistance that may be necessary for their best and most expeditious fulfillment.

Article XXI.

In deciding points of fact that may be raised before it, the Central American Court of Justice shall be governed by its free judgment, and with respect to points of law, by the principles of International Law. The final judgment shall cover each one of the points in litigation.

Article XXII.

The Court is competent to determine its jurisdiction, interpreting the Treaties and Conventions germane to the matter in dispute, and applying the principles of international law.

Article XXIII.

Every final or interlocutory decision shall be rendered with the concurrence of at least three of the Justices of the Court. In case of disagreement, one of the substitute Justices shall be chosen by lot, and if still a majority of three be not thus obtained other Justices shall be successively chosen by lot until three uniform votes shall have been obtained.

Article XXIV.

The decisions must be in writing and shall contain a statement of the reasons upon which they are based. They must be signed by all the Justices of the Court and countersigned by the Clerk. Once they have been notified they can not be altered on any account; but, at the request of any of the parties, the Tribunal may declare the interpretation which must be given to its judgments.

Article XXV.

The judgments of the Court shall be communicated to the five Governments of the contracting Republics. The interested parties solemnly bind themselves to submit to said judgments, and all agree to lend all moral support that may be necessary in order that they may be properly fulfilled, thereby constituting a real and positive guarantee of respect for this Convention and for the Central American Court of Justice.

Article XXVI.

The Court is empowered to make its rules, to formulate the rules of procedure which may be necessary, and to determine the forms and terms not prescribed in the present Convention. All the decisions which may be rendered in this respect shall be communicated immediately to the High Contracting Parties.

Article XXVII.

The High Contracting Parties solemnly declare that on no ground nor in any case will they consider the present Convention as void; and that, therefore, they will consider it as being always in force during the term of ten years counted from the last ratification. In the event of the change or alteration of the political status of one or more of the Contracting Republics, the functions of the Central American Court of Justice created by this Convention shall be suspended *ipso facto*; and a conference to adjust the constitution of said Court to the new order of things shall be forthwith convoked by the respective Governments; in case they do not unanimously agree the present Convention shall be considered as rescinded.

Article XXVIII.

The exchange of ratifications of the present Convention shall be made in accordance with Article XXI of the General Treaty of Peace and Amity concluded on this date.

Provisional Article

As recommended by the Five Delegations an Article is annexed which contains an amplification of the jurisdiction of the Central American Court of Justice, in order that the Legislatures may, if they see fit, include it in this Convention upon ratifying it.

Annexed Article

The Central American Court of Justice shall also have jurisdiction over the conflicts which may arise between the Legislative, Executive and Judicial Powers, and when as a matter of fact the judicial decisions and resolutions of the National Congress are not respected.

Signed at the city of Washington on the twentieth day of December, one thousand nine hundred and seven.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 47
G/36
April 14, 1945

TEXT OF STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

REVISIONS PROPOSED BY DRAFTING COMMITTEE

/The barred words are omitted, and the underscored words are added, by the proposed revisions. The revisions proposed by the Drafting Committee are indicated by slanting lines through words to be omitted and by double underscoring of words to be added./

Article 1.

/No text proposed./

CHAPTER I

Organization of the Court

Article 2.

/No change./

Articles 3-13.

/Consideration deferred pending report of subcommittee. (Jurist 24)./

Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of ~~the League of Nations~~ The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.~~at its next session~~.

Article 15.

~~A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.~~ A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term. ~~The term of a member of the Court shall expire upon his attaining the age of seventy-five years, and no person may be elected a member of the Court after he has attained the age of seventy-two years.~~

/Subject to reconsideration after action on the report of the subcommittee on Articles 3 to 13 (Jurist 24)./

Article 16.

(1). The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

(2). Any doubt on this point is settled by the decision of the Court.

/Subject to reconsideration after action on the report of the subcommittee on Articles 3 to 13 (Jurist 24)./

Article 17.

(1). No member of the Court may act as agent, counsel or advocate in any case.

(2). No member may participate in the decision of any case in which he has previously taken ~~an active~~ part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3). Any doubt on this point is settled by the decision of the Court.

[Subject to reconsideration after action on the report of the subcommittee on Articles 3 to 13 (Jurist 24).]

Article 18.

(1). A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2). Formal notification thereof shall be made to the Secretary-General of ~~the League of Nations~~ The United Nations, by the Registrar.

(3). This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

[Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter.]

Article 20.

[No change.]

Article 21.

(1). The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2). It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

~~The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.~~

Article 22.

[Consideration deferred pending report of subcommittee (see Jurist 20).]

Article 23.

(1). The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

[Consideration of paragraph (2) reserved pending discussion of the following proposed text:]

(2). Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance from The Hague at which each judge resides.

(3). Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

(1). If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2). If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3). If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1). The full Court shall sit except when it is expressly provided otherwise.

(2). Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3). Provided always that a quorum of nine judges shall suffice to constitute the Court.

Article 26.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 27.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 28.

[Consideration deferred pending report of subcommittee (see Jurist 20).]

Article 29.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 30.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 31.

(1). Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

/Consideration of paragraphs 2 and 3 deferred pending action on the following alternative test./

(2). If there is any party to a case /dispute/ before the Court a judge of whose nationality is not included upon the Bench, that party may choose a person to sit as judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(4). The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5). Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

(6). Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues. this

Article 32.

(1). The members of the Court shall receive an annual salary.

(2). The President shall receive a special annual allowance.

(3). The Vice-President shall receive a special allowance for every day on which he acts as President.

(4). The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

(5). These salaries, allowances and indemnities shall be fixed by the General Assembly of ~~the League of Nations~~ The United Nations ~~on the proposal of the Council~~. They may not be decreased during the term of office.

(6). The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

[Consideration of last two paragraphs reserved.]

Article 33.

[No change.]

CHAPTER II

Competence of the Court

Article 34.

(1). Only States or Members of ~~the League of Nations~~ The United Nations can be parties in cases before the Court.

[Decision reserved upon the desirability of shifting this paragraph to Article 50.]

(2). The Court ~~may~~, subject to and in conformity with its own rules, may request of public international organizations information relevant to cases before it, and it shall also receive such information ~~[illegible]~~ presented by such organizations on their own initiative.

Article 35.

(1). The Court shall be open to the Members of ~~the League~~ The United Nations and also to States ~~mentioned in the Annex to the Covenant~~ parties to the present Statute.

(2). The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

(3). When a State which is not a Member of ~~the League of Nations~~ The United Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36.

[Consideration reserved pending report of subcommittee.]

Article 37.

[Consideration reserved pending decision upon the following proposed text:]

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or to the Permanent Court of International Justice, the Court will, as between the parties to the present Statute, be such tribunal.

Article 38.

(1). The Court shall apply:

(a) 1/ International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) 2/ International custom, as evidence of a general practice accepted as law;

(c) ~~3~~ The general principles of law recognized by civilized nations;

(d) ~~4~~ Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2). This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

Article 39.

(1). The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

(2). In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

(3). The Court ~~may~~ shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40.

(1). Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

(2). The Registrar shall forthwith communicate the application to all concerned.

(3). He shall also notify the Members of ~~the League of Nations~~ The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1). The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

(2). Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1). The parties shall be represented by agents.

(2). They may have the assistance of counsel or advocates before the Court.

Article 43.

(1). The procedure shall consist of two parts: written and oral.

(2). The written proceedings shall consist of the communication to the ~~Judges~~ Court and to the parties of ~~Cases~~ Memorials, ~~Counter-Cases~~ Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3). These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

(4). A certified copy of every document produced by one party shall be communicated to the other party.

(5). The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1). For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2). The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

[No change.]

Article 46.

[No change.]

Article 47.

(1). Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2). These minutes alone shall be ~~the only~~ authentic. ~~records~~

Articles 48-52.

[No change.]

Article 53.

(1). Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2). The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1). When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2). The Court shall withdraw to consider the judgment.

(3). The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1). All questions shall be decided by a majority of the judges present at the hearing.

(2). In the event of an equality of votes, the President or ~~his deputy~~ the judge who acts in his place shall have a casting vote.

Article 56.

(1). The judgment shall state the reasons on which it is based.

(2). It shall contain the names of the judges who have taken part in the decision.

Article 57.

(1). If the judgment does not represent in whole or in part the unanimous opinion of the judges, ~~dissenting judges are~~ any judge shall be entitled to deliver a separate opinion.

Articles 58-60.

[No change.]

Article 61.

(1). An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2). The proceedings for revision will be open by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3). The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4). The application for revision must be made at latest within six months of the discovery of the new fact.

(5). No application for revision may be made after the lapse of ten years from the date of the ~~sentence~~ judgment.

Article 62.

(1). Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.~~as a third party~~

(2). It shall be for the Court to decide upon this request.

Article 63.

(1). Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2). Every State so notified has the right to intervene in the proceedings: But if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

/No change./

Advisory Opinions

Article 65.

(1). Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the ~~President of the Assembly~~ President of the General Assembly ~~or the~~ or the President of the Security Council ~~of the League of Nations~~, or by the Secretary-General of ~~the League~~ The United Nations under instructions from the General Assembly ~~Assembly or~~ or the Security Council.

(2). The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1). The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of ~~the League of Nations~~ The United Nations, through the Secretary-General of ~~the League~~ The United Nations, and to any States entitled to appear before the Court,

(2). The Registrar shall also, by means of a special and direct communication, notify any Member of ~~the League~~ The United Nations or State ~~admitted~~ entitled to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3). Should any Member or State referred to in ~~the first~~ paragraph (1) of this Article have failed to receive the special communication ~~specified~~ referred to above, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4). ~~2.~~ Members, States, and organizations having presented written or oral statements or both shall be ~~admitted~~ permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

[No change.]

Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

Amendment

Article 69.

[Decision reserved pending discussion of the following substitute text proposed with a vew to conforming this provision with the corresponding provision of the Dumbarton Oaks Proposals:]

Amendments to the present Statute, proposed by the General Assembly of the United Nations acting by two-thirds vote, shall become effective when ratified in accordance with their constitutional processes by a majority of the parties to the present Statute, including all of the states having permanent seats on the Security Council.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 49 (47)
G/38
April 15, 1945

TEXT OF STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

REVISIONS PROPOSED BY DRAFTING COMMITTEE

/The barred words are omitted, and the underscored words are added, by the proposed revisions. The revisions proposed by the Drafting Committee are indicated by slanting lines through words to be omitted and by double underscoring of words to be added./

Article 1.

/No text proposed./

CHAPTER I

Organization of the Court

Article 2.

/No change./

Articles 3-13.

/Consideration deferred pending report of subcommittee (Jurist 24)./

Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of ~~the League of Nations~~ The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council. ~~at its next session~~.

Article 15.

~~A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.~~ A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term. ~~The term of a member of the Court shall expire upon his attaining the age of seventy-five years, and no person may be elected a member of the Court after he has attained the age of seventy-two years~~.

[Subject to reconsideration after action on the report of the subcommittee on Articles 3 to 13 (Jurist 24).]

Article 16.

(1). The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

(2). Any doubt on this point ~~is~~ shall be settled by the decision of the Court.

[Subject to reconsideration after action on the report of the subcommittee on Articles 3 to 13 (Jurist 24).]

Article 17.

(1). No member of the Court may act as agent, counsel or advocate in any case.

(2). No member may participate in the decision of any case in which he has previously taken ~~an active~~ part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3). Any doubt on this point ~~is~~ shall be settled by the decision of the Court.

[Subject to reconsideration after action on the report of the subcommittee on Articles 3 to 13 (Jurist 24).]

Article 18.

(1). A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2). Formal notification thereof shall be made to the Secretary-General of ~~the League of Nations~~ The United Nations, by the Registrar.

(3). This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

[Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter.]

Article 20.

[No change.]

Article 21.

(1). The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2). It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

~~The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.~~

Article 22.

[Consideration deferred pending report of subcommittee (see Jurist 20).]

Article 23.

(1). The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

(2). Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3). Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permenently at the disposal of the Court.

Article 24.

(1). If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2). If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3). If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1). The full Court shall sit except when it is expressly provided otherwise.

(2). Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3). Provided always that a quorum of nine judges shall suffice to constitute the Court.

Article 26.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 27.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 28.

[Consideration deferred pending report of subcommittee (see Jurist 20).]

Article 29.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 30.

[Consideration deferred pending report of subcommittee (see Jurist 23).]

Article 31.

(1). Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2). If the Court includes upon the Bench a judge of the nationality of one of the parties, ~~the~~ any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3). If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to ~~select~~ choose a judge as provided in the preceding paragraph.

(4). The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5). Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point ~~is~~ shall be settled by the decision of the Court.

(6). Judges ~~selected~~ chosen as laid down in paragraphs (2), (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17 (~~paragraph~~ 2), 20 and 24 of ~~this~~ the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32.

(1). The members of the Court shall receive an annual salary.

(2). The President shall receive a special annual allowance.

(3). The Vice-President shall receive a special allowance for every day on which he acts as President.

(4). The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

(5). These salaries, allowances and indemnities shall ~~be~~ fixed by the General Assembly of ~~the League of Nations~~ The United Nations ~~on the proposal of the Council~~. They may not be decreased during the term of office.

(6). The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

Article 33.

/No change/

CHAPTER II

Competence of the Court

Article 34

(1). Only States or Members of ~~the League of Nations~~ The United Nations can be parties in cases before the Court.

(2). The Court ~~may~~, subject to and in conformity with its ~~own~~ Rules, may request of public international organizations information relevant to cases before it, and ~~it~~ shall also receive such information ~~voluntarily~~ presented by such organizations on their own initiative.

Article 35.

(1). The Court shall be open to the Members of ~~the League~~ The United Nations and also to States ~~mentioned in the Annex to the Covenant~~ parties to the present Statute.

(2). The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

(3). When a State which is not a Member of ~~the League of Nations~~ The United Nations is a party to a ~~dispute~~ case, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36.

[Consideration reserved pending report of subcommittee.]

Article 37

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court will be such tribunal.

[Subject to reconsideration after the adoption of a text of Article 1.]

Article 38.

(1). The Court shall apply:

(a) 1/ International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) 2/ International custom, as evidence of a general practice accepted as law;

(c) ~~3~~ The general principles of law recognized by civilized nations;

(d) ~~4~~ Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2). This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

Article 39.

(1). The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

(2). In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

(3). The Court ~~may~~ shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40.

(1). Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

(2). The Registrar shall forthwith communicate the application to all concerned.

(3). He shall also notify the Members of ~~the League of Nations~~ The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1). The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

(2). Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1). The parties shall be represented by agents.

(2). They may have the assistance of counsel or advocates before the Court.

Article 43.

(1). The procedure shall consist of two parts: written and oral.

(2). The written proceedings shall consist of the communication to the ~~Judges~~ Court and to the parties of ~~Cases~~ Memorials, ~~Counter-Cases~~ Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3). These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

(4). A certified copy of every document produced by one party shall be communicated to the other party.

(5). The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1). For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2). The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

[No change.]

Article 46.

[No change.]

Article 47.

(1). Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2). These minutes alone shall be ~~the only~~ authentic. ~~record.~~

Articles 48-52.

[No change.]

Article 53.

(1). Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2). The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

(1). When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2). The Court shall withdraw to consider the judgment.

(3). The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1). All questions shall be decided by a majority of the judges present. ~~at the hearing~~.

(2). In the event of an equality of votes, the President or ~~his deputy~~ the judge who acts in his place shall have a casting vote.

Article 56.

(1). The judgment shall state the reasons on which it is based.

(2). It shall contain the names of the judges who have taken part in the decision.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, ~~dissenting judges are~~ any judge shall be entitled to deliver a separate opinion.

Articles 58-60.

[No change.]

Article 61.

(1). An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2). The proceedings for revision will be open by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3). The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4). The application for revision must be made at latest within six months of the discovery of the new fact.

(5). No application for revision may be made after the lapse of ten years from the date of the ~~sentence~~ judgment.

Article 62.

(1). Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.~~as a third party~~

(2). It shall be for the Court to decide upon this request.

Article 63.

(1). Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2). Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

[No change.]

Advisory Opinions

Article 65.

(1). Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the ~~President of the Assembly~~ President of the General Assembly ~~or the~~ or the President of the Security Council ~~of the League of Nations~~, or by the Secretary-General of ~~the League~~ The United Nations under instructions from the General Assembly ~~Assembly or~~ or the Security Council.

(2). The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1). The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of ~~the League of Nations~~ The United Nations, through the Secretary-General of ~~the League~~ The United Nations, and to any States entitled to appear before the Court.

(2). The Registrar shall also, by means of a special and direct communication, notify any Member of ~~the League~~ The United Nations or State ~~admitted~~ entitled to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3). Should any Member or State referred to in ~~the first~~ paragraph (1) of this Article have failed to receive the special communication ~~specified~~ referred to above, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4). ~~2/~~ Members, States, and organizations having presented written or oral statements or both shall be ~~admitted~~ permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

/No change./

Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

Amendment

Article 69.

~~Amendments to this Statute, proposed by the General Assembly of the United Nations acting by majority vote, shall become effective when ratified in accordance with their constitutional processes by two-thirds of the members of the United Nations, including all of the states having permanent seats on the Security Council~~.

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the members of the United Nations having permanent membership on the Security Council and by a majority of the other parties to the Statute.

[The above text was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed.]

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 48
G/37
April 14, 1945.

TEXTE DU STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE

REVISIONS PROPOSEES PAR LE COMITE DE REDACTION

[Les mots barrés horizontalement sont supprimés et les mots soulignés sont ajoutés par les révisions proposées. Les articles non modifiés de l'ancien statut sont simplement signalés par leur numéro. Les mots rayés verticalement sont supprimés par le Comité et les mots soulignés deux fois sont ceux ajoutés par ce même Comité.]

Article 1.

[Aucun texte proposé.]

CHAPITRE I

Organisation de la Cour

Article 2.

[Sans modification.]

Articles 3-13.

[L'art. 3 à l'art. 13 soumis au sous-comité dont le rapport n'a pas encore été examiné (Jurist 24).]

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire général ~~de la Société des Nations~~ des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de Sécurité ~~dans sa première session~~.

Article 15.

~~Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.~~ Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur. ~~Le mandat du membre de la Cour expirera quand il aura atteint l'âge de 72 ans, personne ne pourra être élu membre de la Cour après qu'il a atteint l'âge de 72 ans~~.

[Sous réserve du rapport du sous-comité chargé des articles de 3 à 13 (Jurist 24).]

Article 16.

(1). Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2). En cas de doute, la Cour décide.

[Sous réserve d'examen après action du rapport du sous-comité de l'examen des articles 3 à 13 (Jurist 24).]

Article 17.

(1). Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2). Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3). En cas de doute, la Cour décide.

/Sous réserve d'examen après action du rapport du sous-comité de l'examen des articles 3 à 13 (Jurist 24)./

Article 18.

(1). Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2). Le Secrétaire général ~~de la Société des Nations~~ des Nations Unies en est officiellement informé par le Greffier.

(3). Cette communication emporte vacance de siège.

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

/Sous réserve d'examen aprés les provisions au même sujet ont été adoptées pour inclusion dans la Chartre./

Article 20.

/Sans changement./

Article 21.

(1). La Cour élit, pour trois ans, son Président et son vice-président; ils sont rééligibles.

(2). Elle nomme son greffier et pourra désigner tels autres fonctionnaires qui peuvent se révéler nécessaires.

~~La fonction de greffier de la Cour n'est pas incompatible avec celle de secrétaire général de la Cour permanente d'arbitrage.~~

Article 22.

[En attente du rapport du sous-comité chargé de l'examen des Art. 22 et 28 (Jurist 20).]

Article 23

(1). La Cour reste toujour en fonction, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

[Paragraphe 2 en attente de la discussion du projet de texte suivant:]

(2). Les membres de la Cour ont droit à des congés périodiques dont le date de le durée seront fixées par le Cour, d'après la distance qui sépare La Haye du lieu de résidence du juge.

(3). Les membres de la Cour sont tenus, a moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1). Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2). Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

(3). Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25.

(1). Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

(2). Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3). Toutefois, le quorum de neuf est suffisant pour constituer la Cour.

Article 26.

/En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29, et 30 (Jurist 23)._7

Article 27.

/En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29, et 30 (Jurist 23)._7

Article 28.

/En attente du rapport du sous-comité chargé de l'examen des articles 22 et 28 (Jurist 20)._7

Article 29.

/En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29, et 30 (Jurist 23)._7

Article 30

/En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29, et 30 (Jurist 23)._7

Article 31.

[Paragraphe 1 sans changement.]

[Par. 2 et 3, en attente d'une décision à prendre sur le texte suivant:]

(2). Toute partie à un différent qui ne compte pas sur le siège un juge de sa nationalité a le droit de désigner une personne de son choix pour siéger en qualité de juge en le choisissant de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

[Les 3 derniers paragraphes sont supprimés.]

Article 32.

(1). Les membres de la Cour reçoivent un traitement annuel.

(2). Le Président reçoit une allocation annuelle spéciale.

(3). Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4). Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5). Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale ~~de la Société des Nations~~ des Nations Unies ~~sur la proposition du Conseil~~. Ils ne peuvent être diminués pendant la durée des fonctions.

(6). Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour. [Examen réservé.]

(7). Un règlement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage. [Examen réservé.]

(8). Les traitements, indemnités et allocations sont exempts de tout impôt. [Examen réservé.]

Article 33.

[Sans changement.]

CHAPITRE II

Compétence de la Cour.

Article 34.

(1). Seuls les Etats ou les Membres ~~de la Société des Nations~~ des Nations Unies ont qualité pour se présenter devant la Cour.

(2). Le Cour ~~pourra~~, en se conformant é son propre Réglement, pourra demander aux organisations internationales publiques des reseignements relatifs aux affaires portées devant elle, et elle recevra également les renseignements qui lui seraient ~~volontairement~~ présentés par ces organisations sur leur propre initiative.

[Ce dernier paragraphe pourra selon décision du Comité être inséré à l'art. 50.]

Article 35.

(1). La Cour est ouverte aux Membres ~~de la Société des Nations~~ des Nations Unies ainsi qu'aux Etats ~~mentionnés à l'annexe au Pacte~~ parties au présent Statut.

(2). Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3). Lorsqu'un Etat, qui n'est pas membre ~~de la Société des Nations~~ des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

Article 36.

[Examen réservé jusqu'à la décision du sous-comité.]

Article 37.

[Examen réservé jusqu'à décision sur le projet de texte suivant:]

Lorsqu'un traité ou une convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou à la Cour Permanente de Justice Internationale, la Cour sera cette juridiction pour les partie au present Statut.

Article 38.

[Sans changement.]

CHAPITRE III

Procédure.

Article 39.

/Sans changement./

Article 40.

(1). Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffe; dans les deux cas, l'object du différend et les parties en cause doivent être indiqués.

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(2). Le Greffe donne immédiatement communication de la requête à tous intèressès.

(3). Il en informe également les Membres ~~de la Societe des Nations~~ des Nations Unies par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

Article 41.

(1). La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre previsoire.

(2). En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42.

[Sans changement.]

Article 43.

[Sans changement.]

Article 44.

/Sans Changement./

Article 45.

/Sans changement./

Article 46.

/Sans changement./

Article 47.

/Sans changement./

Articles 48-52.

/Sans changement./

Article 53.

/Sans changement./

Article 54.

/Sans changement./

Article 55.

/Sans changement./

Article 56.

/Sans changement./

Article 57.

(1). Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, tout juge aura le droit d'y joindre l'exposé de son opinion individuelle.

Articles 58-60.

/Sans changement./

Article 61.

/Sans changement./

Article 62.

/Sans changement./

Article 63.

/Sans changement./

Article 64.

/Sans changement./

CHAPITRE IV.

Avis consultatifs.

Article 65.

(1) Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par le ~~président de l'Assemblée~~ le Président de l'Assemblée générale ou par le président du Conseil de Sécurité ~~de la Société des Nations~~, soit par le Secrétaire général ~~de la Société~~ des Nations Unies agissant en vertu d'instructions ~~de~~ l'Assemblée générale ~~ou l'Assemblée~~ ou du Conseil de Sécurité.

(2) La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

Article 66.

1. (a) Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres ~~de la Société des Nations~~ des Nations Unies par l'entremise du Secrétaire général ~~de la Société~~ des Nations Unies, ainsi qu'aux Etats admis à ester en justice devant la Cour.

(b) En outre, à tout Membre ~~de la Société~~ des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siége pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

Si un des Membres de la Société ou des Etats mentionnés au premier alinéa du présent paragraphe, n'ayant pas été l'objet de la communication spéciale cidessus visée, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

2. Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés,

dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Article 67.

/Sans changement./

Article 68.

/Sans changement sauf l'addition de "présent" avant le mot "Statut"./

CHAPITRE V.

Amendement

Article 69.

/Décision réservée pendant la discussion de l'article suivant proposé en vue d'adapter cette disposition à la disposition correspondante du projet de Dumbarton Oakes:/

Les amendements au présent statut proposés par l'Assemblée Generale des Nations Unies votent à une majorité des deux tiers, entreront en vigueur, après avoir été ratifiés selon leur procédure constitutionnelle, par la majorité des parties aux présents statuts, y compris tous les états ayant d'un siège permanent au Conseil de Sécurité.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 50 (48)
G/39
April 15, 1945

TEXTE DU STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE

REVISIONS PROPOSEES PAR LE COMITE DE REDACTION

[Les mots barrés horizontalement sont supprimés et les mots soulignés sont ajoutés par les révisions proposées. Les articles non modifiés de l'ancien statut sont simplement signalés par leur numéro. Les mots rayés verticalement sont supprimés par le Comité et les mots soulignés deux fois sont ceux ajoutés par ce même Comité.]

Article 1.

[Aucun texte proposé.]

CHAPITRE I

Organisation de la Cour

Article 2.

[Sans modification.]

Articles 3-13.

[L'art. 3 à l'art. 13 soumis au sous-comité dont le rapport n'a pas encore été examiné (Jurist 24).]

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire général ~~de la Société des Nations~~ des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de Sécurité ~~dans sa première session~~.

Article 15.

~~Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.~~ Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur. ~~Le mandat du membre de la Cour expirera quand il aura atteint l'âge de 75 ans, personne ne pourra être élu membre de la Cour après qu'il a atteint l'âge de 72 ans~~.

[Sous réserve du rapport du sous-comité chargé des articles de 3 à 13 (Jurist 24).]

Article 16.

(1). Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2). En cas de doute, la Cour décide.

[Sous réserve d'examen après action du rapport du sous-comité de l'examen des articles 3 à 13 (Jurist 24).]

Article 17.

(1). Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2). Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3). En cas de doute, la Cour décide.

[Sous réserve d'examen après action du rapport du sous-comité de l'examen des articles 3 à 13 (Jurist 24).]

Article 18.

(1). Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2). Le Secrétaire général de ~~la Société des Nations~~ des Nations Unies en est officiellement informé par le Greffier.

(3). Cette communication emporte vacance de siège.

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

[Sous réserve d'examen aprés les provisions au même sujet ont été adoptées pour inclusion dans la Chartre.]

Article 20.

[Sans changement.]

Article 21

(1). La Cour élit, pour trois ans, sc Président et son vice-président; ils sont rééligibles.

(2). Elle nomme son greffier et peut pourvoir à la nomination de tels autres fonctionnaires qui seraient nécessaires.

~~La fonction de Greffier de la Cour n'est pas incompatible avec celle de Secrétaire général de la Cour permanente d'arbitrage.~~

Article 22.

/En attente du rapport du sous-comité chargé de l'examen des Art. 22 et 28 (Jurist 20)./

Article 23.

(1). La Cour reste toujours en fonction, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

/Paragraphe 2 en attente de la discussion du projet de texte suivant:/

(2). Les membres de la Cour ont droit à des congés périodiques dont la date et la durée seront fixées par la Cour, en tenant compte de la distance qui sépare la Haye de leurs payers.

(3). Les membres de la Cour sont tenus, à moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1). Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2). Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

(3). Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25.

(1). Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

(2). Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3). Toutefois, le quorum de neuf est suffisant pour constituer la Cour.

Article 26.

[En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29, et 30 (Jurist 23).]

Article 27.

[En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29. et 30 (Jurist 23).]

Article 28.

[En attente du rapport du sous-comité chargé de l'examen des articles 22 et 28 (Jurist 20).]

Article 29.

[En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29, et 30 (Jurist 23).]

Article 30.

[En attente du rapport du sous-comité chargé de l'examen des articles 26, 27, 29, et 30 (Jurist 23).]

Article 31.

(1). Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

(2). Si la Cour compte sur le siège un juge de la nationalité d'une des parties, toute ~~l'~~autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont ét l'objet d'une présentation en conformité des articles 4 et 5.

(3). Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent.

(4). La présente disposition s'applique dans le cas des articles 26, 27 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

(5). Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

(6). Les juges désignés, comme il est dit aux paragraphes 2, 3, et 4 du présent article, doivent satisfaire aux prescriptions des articles 2: 17~~, alinéa 2~~; 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

Article 32.

(1). Les membres de la Cour reçoivent un traitement annuel

(2). Le Président reçoit une allocation annuelle spéciale.

(3). Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4). Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5). Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale ~~de la Société des Nations~~ des Nations Unies ~~sur la proposition du Conseil~~. Ils ne peuvent être diminués pendant la durée des fonctions.

(6). Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

(7). Un règlement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

(8). Les traitements, indemnités et allocations sont exempt de tout impôt.

Article 33.

[Sans changement.]

CHAPITRE II

Compétence de la Cour.

Article 34.

(1). Seuls les Etats ou les Membres ~~de la Société des Nations~~ des Nations Unies ont qualité pour se présenter devant la Cour.

(2). La Cour ~~pourra~~, dans les conditions prescrites par son Règlement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle, et recevra également les dits renseignements qui lui seraient ~~volontairement~~ présentés par ces organisations sur leur propre initiative.

Article 35.

(1). La Cour est ouverte aux Membres ~~de la Société des Nations~~ des Nations Unies ainsi qu'aux Etats ~~mentionnés à l'annexe au Pacte~~ parties au présent Statut.

(2). Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3). Lorsqu'un Etat, qui n'est pas membre ~~de la Société des Nations~~ des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

Article 36.

[Examen réservé jusqu'à la décision du sous-comité.]

Article 37.

Lorsqu'un traité ou convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou les Nations Unies, la Cour constituera cette juridiction.

[Sous réserve d'examen après adoption du texte de l'article 1er.]

Article 38.

[Sans changement.]

CHAPITRE III

Procédure.

Article 39

(1). Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue.

(2). A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

(3). La Cour, à la demande de toute partie, ~~autoriser~~ autorisera l'emploi par cette partie d'une langue autre que le français ou l'anglais.

Article 40

(1). Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffe; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

(2). Le Greffe donne immédiatement communication de la requête à tous intèressès.

(3). Il en informe également les Membres ~~de la Société des Nations~~ des Nations Unies par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

Article 41.

(1). La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

(2). En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42.

/Sans changement./

Article 43.

/Sans changement./

Article 44.

[Sans Changement.]

Article 45.

[Sans changement.]

Article 46.

[Sans changement.]

Article 47.

[Sans changement.]

Articles 48-52.

[Sans changement.]

Article 53.

[Sans changement.]

Article 54.

[Sans changement.]

Article 55.

[Sans changement.]

Article 56.

[Sans changement.]

Article 57.

Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, ~~les dissidents ont~~ tout juge aura le droit d'y joindre l'exposé de ~~leur~~ son opinion individuelle.

Articles 58-60.

/Sans changement./

Article 61.

/Sans changement./

Article 62.

/Sans changement./

Article 63.

/Sans changement./

Article 64.

/Sans changement./

CHAPITRE IV.

Avis consultatifs.

Article 65.

(1) Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par ~~président de l'Assemblée~~ le Président de l'Assemblée Générale ou ~~par le~~ le Président du Conseil de Sécurité de ~~la Société des Nations~~, soit par le Secrétaire général ~~de la Société~~ des Nations Unies agissant en vertu d'instructions ~~de~~ l'Assemblée Générale ~~ou l'Assemblée~~ ou du Conseil de Sécurité.

(2) La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

Article 66.

(1). Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres ~~de la Société des Nations~~ des Nations Unies par l'entremise du Secrétaire général ~~de la Société~~ des Nations Unies, ainsi qu'aux Etats admis à ester en justice devant la Cour

(2). En outre, à tout Membre ~~de la Société~~ des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siége pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des esposés oraux au cours d'une audience publique tenue à cet effet.

(3). Si un des Membres de la Société ou des Etats mentionnés au premier alinéa du present article, n'ayant pas été l'objet de la communication spéciale cidessus visée, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

(4). Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. À cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Article 67.

[Sans changement.]

Article 68.

[Sans changement sauf l'addition de "présent" avant le mot "Statut".]

CHAPITRE V.

Amendement

Article 69.

~~Les amendements à ce Statut, proposés par l'Assemblée générale des Nations Unies votant à la majorité, entreront en vigueur après avoir été ratifiés, selon leurs procédures constitutionnelles, par les deux-tiers des Membres des Nations Unies, y compris tous les Etats ayant un siège permanent au Conseil de Sécurité.~~

Les amendements au présent Statut entreront en vigueur pour toutes les parties au Statut quand ils auront été adoptés par une majorité des deux tiers des membres de l'Assemblée Générale et ratifiés, selon leur procédure constitutionnelle, par les Etats ayant un siège permanent au Conseil de Sécurité et la majorité des autres parties au présent Statut.

Article 69.

[Ce texte a été adopté en vue de l'adoptation du texte au chapitre XI du Projet de Dumbarton Oaks, sous réserve de nouvel examen au cas de modification à ce texte.]

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 59
G/47
April 20, 1945

DRAFT OF

STATUTE OF AN INTERNATIONAL COURT OF JUSTICE
REFERRED TO IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS

SUBMITTED BY THE
UNITED NATIONS COMMITTEE OF JURISTS
TO THE
UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION
AT SAN FRANCISCO

(Washington, D. C., April 20, 1945)

Article 1.

/For reasons stated in the accompanying Report, the text of Article 1 has been left in blank pending decision by The United Nations Conference at San Francisco./

CHAPTER I

Organization of the Court

Article 2.

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3.

The Court shall consist of fifteen members.

Article 4.

(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

(2) In the case of Members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.

Article 5.

(1) At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court

(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6.

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7.

(1) The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12 (2), these shall be the only persons eligible.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.

(1) Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

(2) In the event of more than one national of the same State or Member of The United Nations obtaining an absolute majority of the votes of both the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

(1) If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

(3) If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

(4) In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the

judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of The United Nations immediately after the first election has been completed.

(3) The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15.

A member of the Court elected to replace a member whose term of office has not expired will hold office for the remainder of his predecessor's term.

Article 16.

(1) The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

(2) Any doubt on this point shall be settled by the decision of the Court.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3) Any doubt on this point shall be settled by the decision of the Court.

Article 18.

(1) A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of The United Nations by the Registrar.

(3) This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

/Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter./

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 21.

(1) The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22.

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting elsewhere whenever the Court considers it desirable.

(2) The President and Registrar shall reside at the seat of the Court.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

(1) If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1) The full Court shall sit except when it is expressly provided otherwise.

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

Article 26.

(1) The Court may from time to time form one or more

chambers, composed of a number of judges which it may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications,

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

Article 27.

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The chambers provided for in Articles 26 and 29 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30.

(1) The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31.

(1) Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to choose a judge as provided in paragraph (2) of this Article.

(4) The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

(6) Judges chosen as laid down in paragraphs (2), (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17(2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32.

(1) The members of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

(3) The Vice-President shall receive a special allowance for every day on which he acts as President.

(4) The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of The United Nations. They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

Article 33.

The expenses of the Court shall be borne by The United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

Competence of the Court

Article 34.

(1) Only States or Members of The United Nations can be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

Article 35.

(1) The Court shall be open to the Members of The United Nations and also to States parties to the present Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of The United Nations is a party to a case, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36.

[The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.]

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties or conventions in force.	[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties or conventions in force.
(2) The Members of The United Nations and the States parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:	(2) The Members of The United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory ipso facto and without special agreement in any legal dispute concerning:
(a) the interpretation of a treaty;	(a) the interpretation of a treaty; or
(b) any question of international law;	(b) any question of international law; or
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;	(c) the existence of any fact which, if established, would constitute a breach of an international obligation; or
(d) the nature or extent of the reparation to be made for the breach of an international obligation.	(d) the nature or extent of the reparation to be made for the breach of an international obligation.
(3) The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.	(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.]

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(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.]

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court will be such tribunal.

[Subject to reconsideration after the adoption of a text of Article 1.]

Article 38.

(1) The Court shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use

the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

(3) The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

(2) Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.

Article 43.

(1) The procedure shall consist of two parts: written and oral.

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(2) The written proceedings shall consist of the communication to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3) These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

(4) A certified copy of every document produced by one party shall be communicated to the other party.

(5) The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1) For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2) The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

(1) Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2) These minutes alone shall be authentic.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

(1) Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2) The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with

Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

(3) The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1) All questions shall be decided by a majority of the judges present.

(2) In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56.

(1) The judgment shall state the reasons on which it is based.

(2) It shall contain the names of the judges who have taken part in the decision.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

(1) An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2) The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3) The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4) The application for revision must be made at latest within six months of the discovery of the new fact.

(5) No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62.

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

(2) It shall be for the Court to decide upon this request.

Article 63.

(1) Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of The United Nations, through the Secretary-General of The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or

international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3) Should any Member of The United Nations or State entitled to appear before the Court have failed to receive the special communication referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4) Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of The United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

Amendment

Article 69.

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of The United Nations having permanent

membership on the Security Council and by a majority of the other parties to the Statute.

/The above text of Article 69 was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed./

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 60
G/48
April 20, 1945

PROJET DE

STATUT DE LA COUR INTERNATIONALE DE JUSTICE

VISEE AU CHAPITRE VII DES PROPOSITIONS DE DUMBARTON OAKS

PROPOSE PAR LE
COMITE DE JURISTES DES NATIONS UNIES
A LA
CONFERENCE DES NATIONS UNIES
POUR L'ORGANISATION INTERNATIONALE
A SAN FRANCISCO

(Washington, D. C., le 20 Avril 1945)

Article 1.

[Pour les raisons indiquées dans le compte-rendu ci-joint, le texte de cet article a été laissé en blanc, en attendant la décision de la Conférence des Nations Unies à San Francisco.]

CHAPITRE I

Organisation de la Cour

Article 2.

La Cour permanente de Justice internationale est un corps de magistrats indépendants, élus sans égard à leur nationalité parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international.

Article 3.

La Cour se compose de quinze membres.

Article 4.

(1) Les membres de la Cour sont élus par l'Assemblée générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées par les groupes nationaux de la Cour permanente d'Arbitrage, conformément aux dispositions suivantes.

(2) En ce qui concerne les Membres des Nations Unies qui ne sont pas représentés à la Cour permanente d'Arbitrage, les listes de candidats seront présentées par des groupes nationaux, désignés à cet effet par leurs gouvernements, dans les mêmes conditions que celles stipulées pour les membres de la Cour d'Arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.

(3) En l'absence d'accord spécial, l'Assemblée générale, sur la proposition du Conseil de Sécurité, réglera les conditions auxquelles peut participer à l'élection des membres de la Cour un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre des Nations Unies.

Article 5.

(1) Trois mois au moins avant la date de l'élection, le Secrétaire général des Nations Unies invite par écrit les membres de la Cour permanente d'Arbitrage appartenant aux Etats parties au présent Statut, ainsi que les membres des groupes nationaux désignés conformément à l'alinéa 2 de l'article 4, à procéder dans un délai déterminé par groupes nationaux à la présentation de personnes en situation de remplir les fonctions de membre de la Cour.

(2) Chaque groupe ne peut, en aucun cas, présenter plus de quatre personnes, dont deux au plus de sa nationalité. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque groupe national de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

Article 7.

(1) Le Secrétaire général des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées: seules ces personnes sont éligibles, sauf le cas prévu à l'article 12, paragraphe 2.

(2) Le Secrétaire général communique cette liste à l'Assemblée générale et au Conseil de Sécurité.

Article 8.

L'Assemblée générale et le Conseil de Sécurité procèdent indépendamment l'un de l'autre à l'élection des membres de la Cour.

Article 9.

Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent dans l'ensemble la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde.

Article 10.

(1) Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée générale et dans le Conseil de Sécurité.

(2) Au cas où le double scrutin de l'Assemblée générale et du Conseil de Sécurité se porterait sur plus d'un ressortissant du même Etat ou Membre des Nations Unies, le plus âgé est seul élu.

Article 11.

Si, après la première séance d'élection, il reste encore des sièges à pourvoir, il est procédé, de la même manière, à une seconde et, s'il est nécessaire, à une troisième.

Article 12.

(1) Si, après la troisième séance d'élection, il reste encore des sièges à pourvoir, il peut être à tout moment formé sur la demande, soit de l'Assemblée générale, soit du Conseil de Sécurité, une Commission médiatrice de six membres, nommés trois par l'Assemblée générale, trois par le Conseil de Sécurité, en vue de choisir pour chaque siège non pourvu un nom à présenter à l'adoption séparée de l'Assemblée générale et du Conseil de Sécurité.

(2) Peuvent être portées sur cette liste, à l'unanimité, toutes personnes satisfaisant aux conditions requises, alors même qu'elles n'auraient pas figuré sur la liste de présentation visée aux articles 4 et 5.

(3) Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les membres de la Cour déjà élus pourvoient aux sièges vacants, dans un délai à fixer par le Conseil de Sécurité, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée générale, soit dans le Conseil de Sécurité.

(4) Si parmi les juges il y a partage égal des voix, la voix du juge le plus âgé l'emporte.

Article 13.

(1) Les membres de la Cour sont élus pour neuf ans. Ils sont rééligibles; toutefois, à la première élection,

le mandat de cinq juges portera sur une période de trois ans et celui de cinq autres sur une période de six ans.

(2) Le nom des juges élus pour les périodes initiales de trois ou six ans mentionnées ci-dessus sera tiré au sort par le Secrétaire général des Nations Unies à l'issue de la première élection.

(3) Les membres de la Cour restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

(4) En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire général des Nations Unies. Cette dernière notification emporte vacance de siège.

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire général des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de Sécurité.

Article 15.

Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Article 16.

(1) Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2) En cas de doute, la Cour décide.

Article 17.

(1) Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2) Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3) En cas de doute, la Cour décide.

Article 18.

(1) Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2) Le Secrétaire général des Nations Unies en est officiellement informé par le Greffier.

(3) Cette communication emporte vacance de siège.

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

[Sous réserve d'examen après que des dispositions à ce sujet auront été adoptées pour inclusion dans la Charte.]

Article 20.

Tout membre de la Cour doit, avant d'entrer en fonction, en séance publique, prendre engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

Article 21.

(1) La Cour élit, pour trois ans, son Président et son vice-président; ils sont rééligibles.

(2) Elle nomme son greffier et peut pourvoir à la nomination de tels autres fonctionnaires qui seraient nécessaires.

Article 22.

(1) Le siège de la Cour est fixé à La Haye. Toutefois, la Cour peut siéger ailleurs lorsqu'elle l'estime opportun.

(2) Le Président et le Greffier résident au siège de la Cour.

Article 23.

(1) La Cour reste toujours en fonction, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

(2) Les membres de la Cour ont droit à des congés périodiques dont la date et la durée seront fixées par la Cour, en tenant compte de la distance qui sépare la Haye de leurs foyers.

(3) Les membres de la Cour sont tenus, a moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1) Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2) Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

(3) Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25.

(1) Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

(2) Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3) Toutefois, le quorum de neuf est suffisant pour constituer la Cour.

Article 26.

(1) La Cour peut, de temps à autre, constituer une ou

plusieurs chambres, composées du nombre de juges qu'elle fixera, pour connaître de catégories determinées d'affaires, telles que les litiges de travail et les affaires concernant le transit et les communications.

(2) La Cour peut à tout moment constituer une chambre pour connaître d'une affaire déterminée. Cette chambre sera composée du nombre de juges fixé par la Cour avec l'assentiment des parties.

(3) Les chambres prévues au présent article statueront, si les parties le demandent.

Article 27.

Tout jugement rendu par l'une des chambres prévues aux articles 26 et 29 sera un jugement rendu par la Cour.

Article 28.

Les chambres prévues aux articles 26 et 29 peuvent, avec le consentement des parties en cause, siéger ailleurs qu'à La Haye.

Article 29.

En vue de la prompte expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelés à statuer en procédure sommaire lorsque Les parties le demandent. Deux juges seront, en outre, désignés, pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger.

Article 30.

(1) La Cour détermine par un règlement le mode suivant lequel elle exerce ses attributions. Elle règle notamment sa procédure.

(2) Le Règlement de la Cour peut prévoir des assesseurs qui siégeront à la Cour ou à l'une de ses chambres, avec voix consultative.

Article 31.

(1) Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

(2) Si la Cour compte sur le siège un juge de la nationalité d'une des parties, toute autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

(3) Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent.

(4) La présente disposition s'applique dans le cas des articles 26, 27 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

(5) Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

(6) Les juges désignés, comme il est dit aux paragraphes 2, 3, et 4 du présent article, doivent satisfaire aux prescriptions des articles 2, 17, alinéa 2, 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

Article 32.

(1) Les membres de la Cour reçoivent un traitement annuel.

(2) Le Président recoit une allocation annuelle spéciale.

(3) Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4) Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5) Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale des Nations Unies. Ils ne peuvent être diminués pendant la durée des fonctions.

(6) Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

(7) Un règlement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

(8) Les traitements, indemnités et allocations sont exempt de tout impôt.

Article 33.

Les frais de la Cour sont supportés par les Nations Unies de la manière que l'Assemblée générale décide sur la proposition du Conseil.

CHAPITRE II

Compétence de la Cour

Article 34.

(1) Seuls les Etats ou les Membres des Nations Unies ont qualité pour se présenter devant la Cour.

(2) La Cour, dans les conditions prescrites par son Réglement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle, et recevra également les dits renseignements qui lui seraient présentés par ces organisations de leur propre initiative.

Article 35.

(1) La Cour est ouverte aux Membres des Nations Unies ainsi qu'aux Etats parties au présent Statut.

(2) Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3) Lorsqu'un Etat, qui n'est pas membre des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

Article 36.

/Le Comité soumet ci-dessous deux textes pour le présent Article, l'opinion des membres du Comité étant divisée quant au choix de l'un ou de l'autre./

/(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi que tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur.	/(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi que tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur.
(2) Les Membres des Nations Unies et Etats parties au présent Statut peuvent à tout moment déclarer qu'ils reconnaissent comme obligatoire, de plein droit et sans convention spéciale, vis à vis de tout autre Membre ou Etat acceptant la même obligation, la compétence de la Cour sur toutes ou quelques unes des catégories de différends d'ordre juridique ayant pour objet:	(2) Les Membres des Nations Unies et les Etats parties au présent Statut reconnaissent comme obligatoire entre eux, de plein droit et sans convention spéciale, la compétence de la Cour sur tout différend d'ordre juridique ayant pour objet:
(a) l'interprétation d'un traité;	(a) l'interprétation d'un traité; ou
(b) tout point de droit international;	(b) tout point de droit international; ou
(c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;	(c) la réalité de tout fait, s'il était établi, constituerait la violation d'un engagement international; ou
(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.	(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.
(3) La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.	(3) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide./

(4) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.]

Article 37.

Lorsqu'un traité ou convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations *ou les Nations Unies*, la Cour constituera cette juridiction.

[Sous réserve d'examen après adoption du texte de l'article 1er.]

Article 38.

(1) La Cour applique:

(a) Les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige;

(b) La coutume internationale comme preuve d'une pratique générale acceptée comme étant le droit;

(c) Les principes généraux de droit reconnus par les nations civilisées;

(d) Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

(2) La présente disposition ne porte pas atteinte à la faculté pour la Cour, si les parties sont d'accord, de statuer *ex aequo et bono*.

CHAPITRE III

Procédure

Article 39.

(1) Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

(2) A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle

des deux langues qu'elles préfèreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

(3) La Cour, à la demande de toute partie, autorisera l'emploi par cette partie d'une langue autre que le francais ou l'anglais.

Article 40.

(1). Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffier; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

(2). Le Greffier notifie immédiatement la requête à tous intéressés.

(3). Il en informe également les Membres des Nations Unies par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

Article 41.

(1). La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre previsoire.

(2). En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42.

(1). Les parties sont représentées par des agents.

(2) Elles peuvent se faire assister devant la Cour par des Conseils ou des avocats.

Article 43.

(1) La procédure a deux phases: l'une écrite, l'autre orale.

(2). La procédure écrite comprend la communication à juge et à partie des mémoires, des contre-mémoires, et éventuellement, des répliques, ainsi oue de toute pièce et document à l'appui.

(3). La communication se fait par l'entremise du Greffe dans l'ordre et les délais déterminés par la Cour.

(4) Toute pièce produite par l'une des parties doit être communiquée à l'autre en copie certifiée conforme.

(5) La procédure orale consiste dans l'audition par la Cour des témoins experts, agents, conseils et avocats.

Article 44.

(1). Pour toute notification à faire à d'autres personnes que les agents, conseils et avocats, la Cour s'adresse directement au gouvernement de l'Etat sur le territoire duquel la notification doit produire effet.

(2). Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Article 45.

Les débats sont dirigés par le Président et à défaut de celui-ci par lé Vice-Président; en cas d'empêchement, par le plus ancien des juges présents.

Article 46.

L'audience est publique, à moins qu'il n'en soit autrement décidé par la Cour ou que les deux parties ne demandent que le public ne soit pas admis.

Article 47.

(1). Il est tenu de chaque audience un procès-verbal signé par le Greffier et le Président.

(2). Ce procès-verbal a seul caractère authentique.

Article 48.

La Cour rend des ordonnances pour la direction du proces, la détermination des formes et délais dans lesquels chaque partie doit finalement conclure; elle prend toutes les mesures que comporte l'administration des preuves.

Article 49.

La Cour peut, même avant tout débat, demander aux agents de produire tout document et de fournir toutes explications. En cas de refus, elle en prend acte.

Article 50.

A tout moment, la Cour peut confier une enquête ou une expertise à toute personne, corps, bureau, commission ou organe de son choix.

Article 51.

Au cours des débats, toutes questions utiles sont posées aux témoins et experts dans les conditions que fixera la Cour dans le règlement visé à l'article 30.

Article 52.

Après avoir reçu les preuves et témoignages dans les délais déterminés par elle, la Cour peut écarter toutes dépositions ou documents nouveaux qu'une des parties voudrait lui présenter sans l'assentiment de l'autre.

Article 53.

(1) Lorsqu'une des parties ne se présente pas, ou s'abstient de faire valoir ses moyens, l'autre partie peut demander à la Cour de lui adjuger ses conclusions.

(2) La Cour, avant d'y f[illegible]t, doit s'assurer non seulement qu'elle a compétence av[illegible] des articles 36

et 37, mais que les conclusions sont fondées en fait et en droit.

Article 54.

(1) Quand les agents, avocats et conseils ont fait valoir, sous le contrôle de la Cour, tous les moyens qu'ils jugent utiles, le Président prononce la clôture des débats.

(2) La Cour se retire en Chambre du Conseil pour délibérer.

(3) Les délibérations de la Cour sont et restent secrètes.

Article 55.

(1) Les décisions de la Cour sont prises à la majorité des juges présents.

(2) En cas de partage de voix, la voix du Président ou du juge qui le remplace est prépondérante.

Article 56.

(1) L'arrêt est motivé.

(2) Il mentionne les noms des juges qui y ont pris part.

Article 57.

Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, tout juge aura le droit d'y joindre l'exposé de son opinion individuelle.

Article 58.

L'arrêt est signé par le Président et par le Greffier. Il est lu en séance publique, les agents dûment prévenus.

Article 59.

La décision de la Cour n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé.

Article 60.

L'arrêt est définitif et sans recours. En cas de contestation sur le sens et la portée de l'arrêt, il appartient à la Cour de l'interpréter, à la demande de toute partie.

Article 61.

(1) La revision de l'arrêt ne peut être éventuellement demandée à la Cour qu'à raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, était inconnu de la Cour et de la partie qui demande la revision, sans qu'il y ait, de sa part, faute à l'ignorer.

(2) La procédure de revision s'ouvre par un arrêt de la Cour constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la revision, et déclarant de ce chef la demande recevable.

(3) La Cour peut subordonner l'ouverture de la procédure en revision à l'exécution préalable de l'arrêt.

(4) La demande en revision devra être formée au plus tard dans le délai de six mois après la découverte du fait nouveau.

(5) Aucune demande de revision ne pourra être formée après l'expiration d'un délai de dix ans à dater de l'arrêt.

Article 62.

(1) Lorsqu'un Etat estime que dans un différend un intérêt d'ordre juridique est pour lui en cause, il peut adresser à la Cour une requête, à fin d'intervention.

(2) Le Cour décide.

Article 63.

(1) Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffe les avertit sans délai.

(2) Chacun d'eux a le droit d'intervenir au procès, et s'il exerce cette faculté, l'interprétation contenue dans la sentence est également obligatoire à son égard.

Article 64.

S'il n'en est autrement décidé par la Cour, chaque partie supporte ses frais de procédure.

CHAPITRE IV.

Avis consultatifs

Article 65.

(1) Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par le Président de l'Assemblée Générale ou par le Président du Conseil de Sécurité, soit par le Secrétaire général des Nations Unies agissant en vertu d'instructions de l'Assemblée Générale ou du Conseil de Sécurité.

(2) La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

Article 66.

(1) Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres des Nations Unies par l'entremise du Secrétaire général des Nations Unies,

ainsi qu'aux Etats admis à ester en justice devant la Cour.

(2) En outre, à tout Membre des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siége pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

(3) Sil'un des Membres des Nations Unies ou des Etats admis à ester devant la Cour, n'ayant pas été l'objet de la communication spéciale visée au paragraphe 2 du présent Article, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statute.

(4) Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Article 67.

La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire général des Nations Unies et les représentants des Membres des Nations Unies, des Etats et des organisations internationales directement intéressés étant prévenus.

Article 68.

Dans l'exercice de ses attributions consultatives, la Cour s'inspirera en outre des dispositions du présent Statut qui s'appliquent en matière contentieuse, dans la mesure où elle les reconnaîtra applicables.

CHAPITRE V.

Amendement

Article 69.

Les amendements au présent Statut entreront en vigueur pour toutes les parties au Statut quand ils auront été adoptés

à la majorité des deux tiers des membres de l'Assemblée Générale et ratifiés, selon leur procédure constitutionnelle, par les Etats ayant un siège permanent au Conseil de Sécurité et par la majorité des autres parties au présent Statut.

Article 69.

[Ce texte a été adopté en vue dé l'adaptation du texte au chapitre XI du Projet de Dumbarton Oaks, sous réserve de nouvel examen au cas de modification à ce texte.]

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 61
G/49
April 18, 1945

DRAFT REPORT

DRAFT STATUTE OF AN INTERNATIONAL COURT OF JUSTICE PROVIDED FOR IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS SUBMITTED BY THE COMMITTEE OF JURISTS OF THE UNITED NATIONS TO THE UNITED NATIONS CONFERENCE IN SAN FRANCISCO

Washington, April 18, 1945.

The Dumbarton Oaks Proposals having provided that The United Nations International Organization should include among its chief organs, an International Court of Justice, a Committee of Jurists designated by The United Nations met in Washington for the purpose of preparing and submitting to the San Francisco Conference a draft Statute of the said Court. The present report has for its purpose to present the result of the work of this Committee. It could not in any way whatsoever prejudice the decisions of the Conference. The jurists who have drawn it up have, in so doing, acted as jurists without binding the Governments to which they are responsible.

The Dumbarton Oaks Proposals provided that the Court would be the chief judicial organ of The United Nations, that its Statute, annexed to The United Nations Charter, would be an integral part thereof and that all the Members of the International Organization should *ipso facto* be parties to the Statute of the Court. It did not decide whether the said Court would be the Permanent Court of International Justice, the Statute of which would be preserved with amendments, or whether it would be a new Court the Statute of which would, furthermore, be based on the Statute of the existing Court. In the preparation of its draft, the Committee adopted the first method, and it was recalled before it that the Permanent Court of International Justice had functioned for twenty years to the satisfaction of the litigants and that, if violence had suspended its activity, at least this institution had not failed in its task.

Nevertheless, the Committee considered that it was for the San Francisco Conference (1) to determine in what form the mission of the Court to be the chief judicial organ of The United Nations shall be stated, (2) to judge whether it is necessary to recall, in this connection, the present or possible existence of other international courts, (3) to consider the Court as a new court or as the continuance of the Court established in 1920, the Statute of which, revised for the first time in 1929, will again be revised in 1945. These are not questions of pure form; the last, in particular, affects the operation of numerous treaties containing reference to the jurisdiction of the Permanent Court of International Justice.

For these reasons the draft Statute gives no wording for what is to be Article 1 of the latter.

DRAFT STATUTE

Article 1

(Wording Subject to Change)

The Committee has kept the name respected for the last 25 years, of Permanent Court of International Justice and it has proceeded to a revision, article by article, of the Statute of the Court. This revision consisted, on the one hand, in the effecting of certain adaptations of form rendered necessary by the substitution of The United Nations for the League of Nations; on the other hand, in the introduction of certain changes judged desirable and now possible. With regard to this second point, moreover, the Committee has considered that it was better to postpone certain amendments than to compromise by excessive haste the success of the present project for an International Organization, this even in consideration of the eminent function pertaining to the Court in a world organization which The United Nations intend to construct in such manner that peace for all and the rights of each one may be effectively assured. It has happened many times that this examination has led the Committee to propose retaining such or such Articles of the Statute without change. However, the Committee has deemed it useful to number the paragraphs of each article of the Statute, whether changed or not.

CHAPTER I
Organization Of the Court

No change is proposed in Article 2.

Article 2

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from among persons enjoying the highest moral esteem, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurists of recognized competence in international law.

* * *

Although the proposal has been made to reduce the number of the members of the Court either preserving the general structure thereof, or changing it, the Committee has deemed it preferable to preserve both this structure and the number of judges which in 1929 was made fifteen. It has been pointed out that, thereby, the interest taken in the Court in the different countries would be increased and that the creation of chambers within the Court would be facilitated. Accordingly, Article 3 has not been changed.

Article 3

The Court shall consist of fifteen members.

* * *

For the election of the judges it is provided, in accordance with what seems to be the spirit of the Dumbarton Oaks Proposals, to have it done by the General Assembly of the United Nations and the Security Council, leaving to these the duty of determining how a state which, while accepting the Statute of the Court, is not a Member of The United Nations, may participate in the election. The method of nomination with a view to this election has given rise to an extensive debate, certain delegations having advocated nomination by the Governments instead of entrusting such designation to the national groups in the Permanent Court of Arbitration as has been established in the present Statute; the continuance of the present regime has been defended as introducing a non-political influence at this point of the procedure for the election of the judges. In the debate, at the moment of the vote, the Committee was divided without a majority being clearly shown; thus the proposed innovation did not find place in the draft and Article 4 was retained with minor changes of form. Afterward a compromise suggestion was presented without taking the form of an express proposal before the Committee; it would have consisted in giving the Government the power of not transmitting the nominations of candidates decided upon by the national group, this disagreement depriving the country concerned of the exercise of the right to nominate candidates for the election in question.

Article 4

(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration in accordance with the following provisions.

In the case of members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be submitted by national groups, appointed for this purpose by their Governments, under the same conditions as those prescribed for members of the Court of Arbitration by Article 44 of The Hague Convention of 1907 for the pacific settlement of international disputes.

(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.

* * *

The procedure to be followed for the designation of candidates by the national groups is retained with no other change than that consisting in specifying that the groups called upon to participate in such designation are the groups belonging to the States which are parties to this Statute.

Article 5.

(1) At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6.

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

* * *

The following articles concerning the procedure of the election have undergone only the changes in form rendered necessary by references to the organs of The United Nations or, in the English text of Articles 7, 9, and 12, to insure a more exact agreement with the French text.

Article 7.

(1) The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12 (2), these shall be the only persons eligible.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.

(1) Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

(2) In the event of more than one national of the same State or Member of The United Nations obtaining an absolute majority of the votes of both the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

(1) If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

(3) If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

(4) In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

* * *

The Committee has felt that the rule subjecting the Court to a complete renewal every nine years presented serious drawbacks, despite the rule of the re-eligibility of the judges, and the practice, widely followed in 1930, of re-election. Hence it proposes to substitute therefor a system of renewal by one-third every three years. However, certain doubts appear to remain regarding the methods of the system, and these might be made the subject of a further examination with a view to determining whether a solution could not be found in some other way which would consist, contrary to what is said in Article 15, in fixing at nine years the duration of the term of any judge, no matter the circumstances under which he is elected.

Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected, provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of The United Nations immediately after the first election has been completed.

(3) The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

At the close of Article 14, concerning the way in which a place that has become vacant is to be filled, the words "at its next session" have been eliminated, the reason for this being the fact that the Security Council is to be in session permanently.

Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision. the Secretary-General of The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

The Committee has felt that, in the English text of Article 17, par. 2, it is well to eliminate the words "an active", in order to establish closer conformity with the French text: the latter has not been changed. The same is true of the substitution of the expression "shall be"for the word "is" in the English text of the same article, par. 3.

Besides, no change is made in Art. 18 except in par. 2, which arises from the mention of the Secretary-General of The United Nations.

Examination of Article 15 has provided an occasion for several delegations to propose an age limit for judges. However, this proposal was not supported by the Committee, which proposes to retain Articles 15 and 16 without changing them the substitution in the English text of the expression "shall be" for the word "is" does not involve any change in the French text.

Article 15.

A member of the Court elected to replace a member whose term of office has not expired will hold office for the remainder of his predecessor's term.

Article 16.

(1) The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

(2) Any doubt on this point shall be settled by the decision of the Court.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of encuiry, or in any other capacity.

(3) Any doubt on this point shall be settled by the decision of the Court.

Article 18.

(1) A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of The United Nations by the Registrar.

(3) This notification makes the place vacant.

The Committee does not propose any change in Article 19 concerning the granting of diplomatic privileges and immunities to members of the Court. However, it points out that, insofar as The United Nations Charter regulates the granting of such privileges and immunities to the representatives of The United Nations and their agents, it will be well to examine the opportuneness and the way of coordinating the regulations of this nature.

As to Article 20. it has not appeared to call for any change.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

[Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter.]

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Par. 2 of Article 21 has given rise to discussion in consequence of the suggestion that has been made to

Article 21.

(1) The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

***

As the seat of the Court is kept at The Hague, it has appeared proper to add that the Court, when it considers it desirable, may decide to sit at some other place and consequently to perform its duties there. Article 22 has been completed to that effect.

Article 22

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting elsewhere whenever the Court considers it desirable.

(2) The President and Registrar shall reside at the seat of the Court.

* * *

After having carefully examined Article 23, concerning the leaves which may be granted to the members of the Court whose homes are far distant from The Hague, the Committee has retained the wording of the old article, but with a paragraph 2 couched in general terms.

It does not propose to modify Articles 23, 24, and 25.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duratiin of which shall be fixed by the Court.

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending

by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

(1) If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case. he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1) The full Court shall sit except when it is expressly provided otherwise.

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

* * *

The Statute of the Permanent Court of International Justice prescribed in its Articles 26 and 27 the establishment, by the Court, of special Chambers for cases relating to labor and for cases relating to transit and communications.

As a matter of fact, these Chambers were indeed established, but they never functioned, and it appears henceforth superfluous to retain the provisions concerning them. But it has appeared advisable to authorize the Court to establish, if necessary, on the one, hand, Chambers dealing with particular categories of cases, and the precedent of cases relating to labor, transit and communications has been revived, in this connection, and, on the other hand, to establish a special Chamber to deal with a particular case.

Article 26.

(1) The Court may from time to time form one or more chambers, composed of a number of judges which it may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

* * *

These Chambers, as well as those which will form the subject of Article 29, will render decisions which will be decisions of the Court. They may, as provided for by the old Article 28 of the Statute, and as will become the rule for the Court itself, by virtue of the new article, sit elsewhere than at The Hague.

Article 27.

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The chambers provided for in Articles 26 and 29 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

* * *

As for the Chamber for summary procedure established by Article 29, it is retained with mere formal amendations of this article. Logically, the latter should be inserted somewhat above: it is left at this place in order not to change the established numbering.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five

judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

* * *

Article 30 has undergone in Paragraph 1 changes that do not alter the sense which had been given it by the Court. A provision is added thereto authorizing the Court to introduce either for itself or in its Chambers assessors without the right to vote.

Article 30.

(1) The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

* * *

The Committee has examined whether it was not necessary to simplify, by shortening it, the text of Paragraphs 2 and 3 of Article 31 concerning the right of a party to appoint a judge of his nationality. In the end it did not retain this suggestion and made only slight changes in this article: one, in Paragraph 2, consists in saying, in the French text: "toute autre partie" instead of "l'autre partie" and in the English text "any other party" instead of "the other party"; the others, affecting the English text only, substitute, in Paragraphs 3, 5, and 6, for the terms previously employed, better terms corresponding better with the terminology already adopted in the French text.

Article 31.

(1) Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to choose a judge as provided in paragraph (2) of this Article.

(4) The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

(6) Judges chosen as laid down in paragraphs (2), (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17(2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

* * *

Except for the substitution, in Paragraph 5 of Article 32, of the General Assembly of The United Nations for the Assembly of the League of Nations, this Article and Article 33, both concerning the financial system of the Court, are not changed.

Article 32.

(1) The members of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

(3) The Vice-President shall receive a special allowance for every day on which he acts as President.

(4) The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of The United Nations. They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

Article 33.

The expenses of the Court shall be borne by The United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

Competence Of The Court

Since Article 34 states the rule that only States or Members of The United Nations are justiciable in the Court, the Committee has deemed it advisable to add a second paragraph fixing under what conditions information relative to the cases brought before the Court may be requested by the latter from public international organizations or be presented by such organizations on their own initiative. In so doing, the Committee has not wished to go so far as to admit, as certain delegations appear disposed to do, that public international organizations may become parties to a case before the Court. Admitting only that such organizations might, to the extent indicated, furnish information, it has laid down a rule which certain persons have considered as being one of procedure rather than of competence. The Committee, by placing it nevertheless in Article 34, has intended to emphasize its importance.

Article 34.

(1) Only States or Members of The United Nations can be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

* * *

Aside from the purely formal changes necessitated by references to The United Nations Organization instead of to the Covenant of the League of Nations, Article 35 is emended only in that, in the English text of paragraph 3, the word "case" is substituted for the word "dispute" which will assure better agreement with the French text.

Article 35.

(1) The Court shall be open to the Members of The United Nations and also to States parties to the present Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security

Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of The United Nations is a party to a case, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

* * *

The question of compulsory jurisdiction was debated at the time of the initial preparation of the Statute of the Court. Admitted by the Advisory Committee of Jurists, in 1920, it was rejected in the course of the examination of the draft Statute by the League of Nations to yield place, on the successful initiative of a Brazilian jurist, to an optional clause permitting the States to accept in advance the compulsory jurisdiction of the Court in a domain delimited by Article 36. This debate has been resumed and very many delegations have made known their desire to see the compulsory jurisdiction of the Court affirmed by a clause inserted in the revised Statute so that, as the latter is to become an integral part of The United Nations Charter, the compulsory jurisdiction of the Court would be an element of the International Organization which it is proposed to institute at the San Francisco Conference. Judging from the preferences thus indicated, it does not seem doubtful that the majority of the Committee was in favor of compulsory jurisdiction, but it has been noted that, in spite of this predominant sentiment, it did not seem certain, nor even probable, that all the nations whose participation in the proposed International Organization appears as necessary, were at that time in a position to accept the rule of compulsory jurisdiction, and that the Dumbarton Oaks Proposals did not seem to affirm it; some, while retaining their preferences in this respect, thought that the counsel of prudence was not to go beyond the procedure of the optional clause inserted in Article 36, which has opened the way to the progressive adoption, in less than 10 years, of compulsory jurisdiction by many States which in 1920 refused to subscribe to it. Placed on this basis, the problem was found to assume a political character, and the Committee thought that it should defer it to the San Francisco Conference.

In order to facilitate the examination of the question, it thought that it should present, ad memorandum rather than as proposals, two texts.

One is submitted in case the Conference should not intend to affirm in the Statute the compulsory jurisdiction of the Court, but only to open the way for it by offering the States, if they did not think it apropos, acceptance of an optional clause on this subject. This text reproduces Article 36 of the Statute with an addition in case The United Nations Charter should make some provision for compulsory jurisdiction.

The second text, also based on Article 36 of the Statute establishes compulsory jurisdiction directly without passing through the channel of an option which each State would be free to take or not take. Thus it is simpler than the preceding one. It has even been pointed out that it would be too simple. The Committee, however, thought that the moment had not yet come to elaborate it further and see whether the compulsory jurisdiction thus established should be accompanied by some reservations, such as one concerning differences belonging to the past, one concerning disputes which have arisen in the present war, or those authorized by the General Arbitration Act of 1928. If the principle enunciated by this second text were accepted, it could serve as a basis for working out such provisions applying the principle which it enunciates with such modifications as might be deemed opportune.

Article 36.

[The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.]

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties or conventions in force.	[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties or conventions in force.
(2) The Members of The United Nations and the States parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:	(2) The Members of The United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory ipso facto and without special agreement in any legal dispute concerning:

(a) the interpretation of a treaty;	(a) the interpretation of a treaty; or
(b) any question of international law;	(b) any question of international law; or
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;	(c) the existence of any fact which, if established, would constitute a breach of an international obligation; or
(d) the nature or extent of the reparation to be made for the breach of an international obligation.	(d) the nature or extent of the reparation to be made for the breach of an international obligation.
(3) The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.	(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.7
(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.7	

* * *

In order to adapt the provisions of Article 37 to the new situation, it will be necessary to say that when a treaty or a convention in force contemplates reference to a jurisdiction to be established by The United Nations, the Court shall be that jurisdiction. But that will not suffice: it must be added that it is also the Court which continues to constitute or which will constitute the jurisdiction contemplated by any treaty giving competence to the Permanent Court of International Justice.

The form to be given to this second rule depends on the decision which is made on the question of whether the Court governed by the Statute in preparation is considered as a new Court or the Court instituted in 1920 and governed by a Statute which, dating from that year, has been revised in

1945 as it was in 1929. In order not to prejudge the reply which the San Francisco Conference will have to give apropos of Article 1 and to show that in its 1920 text Article 37 is thought to be insufficient, the Committee has herein recorded, ad memorandum, the said article as proposed in the American draft.

It should be observed, moreover, that if the Court which will be governed by the present Statute is considered as a continuation of the Court instituted in 1920, the force of law of the numerous general or special international acts affirming the compulsory jurisdiction of this Court will subsist, that if, on the contrary, the Court is held to be a new Court, the former one disappearing, the said obligations will run the risk of being considered null and void, their restoration to force will not be easy, an advance in law will thus be abandoned or seriously endangered.

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court will be such tribunal.

/Subject to reconsideration after the adoption of a text of Article 1./

* * *

Article 38, which determines, according to its terms, what the Court "shall apply" has given rise to more controversies in doctrine than difficulties in practice. The Committee thought that too many urgent tasks, which it was important to finish properly, had to be taken up by the San Francisco Conference for it to be the opportune time to undertake the revision of the said article. It has trusted to the Court to put it into operation, and has left it without change other than that which appears in the numbering of the provisions of this article.

Article 38.

(1) The Court shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

The provisions of the Statute concerning the official languages of the Court are modified only to specify, in conformity with practice, that the Court, at the request of a party, shall authorize such party to use another language.

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

(3) The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

* * *

In the other provisions of the Statute relative to proprocedure, the Committee did not think it should propose important innovations. In the matter of provisional measures, it considered that the indication of such measures ought to be notified to the Security Council as formerly they had to be to the Council of the League of Nations (Article 41).

It thought it opportune, moreover, to improve the agreement between the two texts of the Statute by changing certain expressions in the English text of Articles 43, paragraph 2, 47, paragraph 2, and 55, paragraphs 1 and 2, without its being necessary to change the French text. Articles 40 to 56, accordingly, now read as follows:

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

(2) Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.

Article 43.

(1) The procedure shall consist of two parts: written and oral.

(2) The written proceedings shall consist of the communication to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3) These communications shall be made through the Registrat, in the order and within the time fixed by the Court.

(4) A certified copy of every document produced by one party shall be communicated to the other party.

(5) The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1) For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2) The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46.

The hearing in Court shall bepublic, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

(1) Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2) These minutes alone shall be authentic.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

(1) Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2) The Court must, before doing so, satisy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

(3) The deliberations of the Court shall take place in privat and remain secret.

Article 55.

(1) All questions shall be decided by a majority of the judges present.

(2) In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56.

(1) The judgment shall state the reasons on which it is based.

(2) It shall contain the names of the judges who have taken part in the decision.

* * *

An innovation which, furthermore, confirms practice has been introduced in Article 57, paragraph 1, which affirms, for the benefit not only of the dissident judge but of any judge, the right to annex to the decision the statement of his individual opinion.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Articles 58 to 64 contain no change in the French text; the formal emendations made in the English text of Articles 61 (substitution of "judgment" for "sentence" in paragraph 5) and 62, paragraph 1 (elimination of the words: "as a third party") do not change the sense thereof.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

(1) An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2) The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3) The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4) The application for revision must be made at latest within six months of the discovery of the new fact.

(5) No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62.

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to interven

(2) It shall be for the Court to decide upon this request.

Article 63.

(1) Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

Advisory Opinions

It is for the Charter of the United Nations to determine what organs of the latter shall be qualified to lay before the Court a request for an advisory opinion. Going beyond the terms of the Dumbarton Oaks Proposals, the Committee has believed that it might presume, with a formal reservation, moreover, that this power would be open not only to the Security Council but also to the General Assembly, and it is on that basis that it has determined how the application should be submitted. Aside from that, the changes made in Articles 65 to 68 are purely formal and do not call for any comment.

CHAPTER IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of The United Nations, through the Secretary-General of The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3) Should any Member of The United Nations or State entitled to appear before the Court have failed to receive the special communication referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4) Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of The United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

* * *

It has been suggested that the provisions of the Court Rules (Article 67) concerning appeals brought before the Court be transferred to the Statute. But it has been observed that those provisions have to do with procedure only, and consequently their place is in the Rules. The part played by the Court as an appeal court is governed by the rules regulating its jurisdiction. Consequently, the suggestion mentioned above was not included.

* * *

CHAPTER V

Amendments

The American Government having proposed the acceptance of a special procedure for amendment of the Statute of the Court, this proposal has appeared suited to fill a regrettable lacuna in the Statute, a lacuna the disadvantage of which has made itself felt in the past. The Committee has changed the American proposal in order to bring it into conformity with the corresponding provision proposed at Dumbarton Oaks to form part of the Charter of The United Nations. The Committee's proposal is dependent on what is decided at San Francisco regarding the changing of the Charter itself. While deeming its proposal provisionally for this reason, the Committee has believed that it should draft it, because of the importance which it attaches to a provision of this nature.

Article 69

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of The United Nations having permanent membership on the Security Council and by a majority of the other parties to the Statute.

/The above text of Article 69 was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed./

* * *

A Member of the Committee has called the attention of the latter to the importance which exact execution of the decisions of the Court has for the reign of law and the maintenance of peace, and he wondered whether the Statute ought not to contain a provision concerning the proper means for assuring this effect. The importance of this suggestion was not contested, but the remark was made that it was not the business of the Court itself to ensure the execution of its decisions, that the matter concerns rather the Security Council, and that Article 13 paragraph 4, of the Covenant had referred in this connection to the Council of the League of Nations. A provision of this nature is not consequently to appear in the Statute, but the attention of the San Francisco Conference is to be called to the great importance connnected with formulating rules on this point in the Charter of The United Nations.

* * *

In presenting the provisions stated and explained above, the Committee feels that it has accomplished the task devolving upon it, which was to prepare a draft Statute with a view to its examination by The United Nations Conference. However, it cannot disregard the fact that among The United Nations there are many which are parties to the Statute of the Court drawn up in 1920 and revised in 1929, and that on that account they are bound not only to one another, but also with respect to States which do not appear among The United Nations. Hence the obligation for them of adjusting the situation arising between them and those States for that reason. That adjustment was not within the province of the Committee: it did not undertake to prejudge it. However, it should be borne in mind that in order to build up an institution of international justice, the regular channels must be followed with special strictness.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 62
G/50
April 18, 1945

PROJET DE RAPPORT.

PROJET DE STATUT D'UNE COUR INTERNATIONALE DE JUSTICE PREVUE AU CHAPITRE VII DU PROJET DE DUMBARTON OAKS, SOUMIS PAR LA COMMISSION DES JURISTES DES NATIONS UNIES A LA CONFERENCE DES NATIONS UNIES DE SAN FRANCISCO.

Washington, 18 avril 1945.

Le projet de Dumbarton Oaks ayant prévu que l'Organisation internationale des Nations Unies devrait comporter, parmi ses organes principaux, une Cour internationale de Justice, une Commission de juristes désignés par les Nations Unies s'est réunie à Washington à l'effet de préparer et de soumettre à la Conférence de San Francisco un projet de Statut de cette Cour. Le présent rapport a pour objet de présenter le résultat des travaux de cette Commission. Il ne saurait préjuger en quoi que ce soit les décisions de la Conférence : les juristes qui l'ont élaboré ont, en le faisant, agi en tant que juristes sans engager les Gouvernements dont ils relèvent.

Le projet de Dumbarton Oaks a prévu que la Cour serait l'organe judiciaire principal des Nations Unies, que son Statut, annexé à la Charte de cellesci, en serait partie intégrante et que tous les membres de l'Organisation internationale devraient être ipso facto parties au Statut de la Cour. Il n'a point déterminé si ladite Cour serait la Cour permanente de Justice Internationale dont le statut serait maintenu avec des amendements ou si ce serait une Cour nouvelle dont le Statut serait d'ailleurs élaboré sur la base du Statut de la Cour existante. Dans la préparation de son projet, la Commission a adopté la première méthode et il a été rappelé devant elle que la Cour permanente de Justice internationale avait fonctionné pendant vingt ans à la satisfaction des plaideurs et que, si la violence avait suspendu son activité, du moins cette institution n'avait pas failli à sa tâche.

Cependant la Commission a estimé qu'il appartenait à la Conférence de San Francisco : I) de déterminer en quelle forme sera énoncée la mission de la Cour d'être l'organe judiciaire principal des Nations Unies, 2) d'apprécier s'il y a lieu de rappeler, à ce propos, l'existence actuelle ou éventuelle d'autres tribunaux internationaux, 3) de considérer la Cour comme une Cour nouvelle ou comme le maintien de la Cour instituée en 1920 et dont le Statut, révisé une première fois en 1929, se trouvera révisé à nouveau en 1945. Ces questions ne sont pas de pure forme; la derniére, en particulier, affecte l'effet de nombreux traités contenant référence à la juridiction de la Cour permanente de Justice internationale.

Pour ces motifs le projet de Statut n'énonce aucune rédaction pour ce que doit être l'article Ier de celui-ci.

PROJET DE STATUT.

Article premier.

(Rédaction réservée)

La Commission a maintenu le nom, depuis vingt cinq ans respecté, de Cour permanente de Justice internationale et elle a procédé à une revision, article par article, du Statut de la Cour. Cette revision a consisté, d'une part, à effectuer certaines adaptations de forme rendues nécessaires par la substitution des Nations Unies à la Société des Nations, d'autre part, à introduire certaines modifications jugées désirables et actuellement possibles. Sur ce second point, d'ailleurs, la Commission a estimé que mieux valait ajourner certains amendements que compromettre par trop de hâte le succès de l'entreprise actuelle d'Organisation internationale, cela en considération même de la fonction éminente revenant à la Cour dans une organisation du monde que les Nations Unies entendent construire de telle facon que la paix pour tous et les droits de chacun soient effectivement assurés. Il est arrivé maintes fois que cet examen ait conduit la Commission à proposer le maintien de tels et tels articles du Statut sans modification. Cependant la Commission a estimé utile de numéroter les paragraphes de chaque article, modifié ou non, du Statut.

CHAPITRE PREMIER

Organisation de la Cour

Aucune modification n'est proposée à l'article 2.

Article 2.

La Cour permanente de Justice internationale est un corps de magistrats indépendants, élus, sans égard à leur nationalité, parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international.

* * *

Bien que la proposition ait été faite de réduire le nombre des membres de la Cour soit en maintenant la structure générale de celle-ci, soit en la modifiant, la Commission a estimé préférable de maintenir et cette structure et le nombre de juges porté à quinze en 1929. Il a été indiqué que, par là, l'intérêt porté à la Cour dans les différents pays serait accru et que la création de Chambres au sein de la Cour serait facilitée. En conséquence l'article 3 n'a pas été modifié.

Article 3.

La Cour se compose de quinze membres.

* * *

Pour l'élection des juges, il est prévu, conformément à ce qui paraît être l'esprit du projet de Dumbarton Oaks, d'y faire procéder par l'Assemblée Générale des Nations Unies et le Conseil de Sécurité, en laissant à ceux-ci le soin de régler comment un Etat qui, tout en ayant accepté le Statut de la Cour, ne serait pas Membre des Nations Unies pourra participer à l'élection. Le mode de présentation des candidatures en vue de cette élection a donné lieu à un ample débat, certaines Délégations ayant préconisé la présentation des candidatures pár les Gouvernements au lieu de confier cette désignation aux Groupes Nationaux de la Cour permanente d'Arbitrage ainsi que l'a établi le Statut actuel: le maintien du régime actuel a été défendu comme introduisant une influence non politique à ce moment de la procédure tendant au choix des juges. Dans le débat, la Commission s'est, au moment du vote, divisée sans qu'une majorité se fût dégagée; ainsi l'innovation projetée n'a pas pris place dans le projet et l'article 4 s'est trouvé maintenu avec de simples retouches de forme. Après coup une suggestion transactionnelle a été présentée sans prendre devant la Commission la forme d'une proposition expresse: elle aurait consisté à donner au Gouvernement la faculté de ne pas transmettre les présentations de candidats arrêtées par le groupe national, ce désaccord privant le pays considéré de l'exercice, pour l'élection en cause, du droit de présenter des candidats.

Article 4.

(I) Les Membres de la Cour sont élus par l'Assemblée Générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées par les Groupes Nationaux de la Cour permanente d'arbitrage; conformément aux dispositions suivantes.

(2) En ce qui concerne les Membres des Nations Unies qui ne sont pas représentées à la Cour permanente d'arbitrage les listes de candidats seront présentées par des Groupes Nationaux, désignés à cet effet par leurs Gouvernements, dans les mêmes conditions que celles stipulées pour les Membres de la Cour d'arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.

(3) En l'absence d'un accord spécial, l'Assemblée Générale sur la proposition du Conseil de Sécurité, règlera les conditions auxquelles peut participer à l'élection des Membres de la Cour, un Etat qui, tout en ayant accepté le statut de la Cour, n'est pas membre des Nations Unies.

* * *

La procédure à suivre pour la désignation des candidats par les groupes nationaux est maintenue sans autre changement que celui consistant à préciser que les groupes appelés à participer à cette désignation sont les groupes appartenant aux Etats qui sont parties au présent Statut.

Article 5.

(I) Trois mois au moins avant la date de l'élection, le Secrétaire Général des Nations Unies invite par écrit les Membres de la Cour Permanente d'arbitrage ainsi que les Membres des Groupes Nationaux désignés conformément au paragraphe 2 de l'article 4, à procéder dans un délai déterminé par les Groupes Nationaux à la présentation de personnes en situation de remplir les fonctions de Membre de la Cour.

(2) Chaque groupe ne peut en aucun cas présenter plus de quatre personnes dont deux au plus de sa nationalite. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque Groupe national de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

* * *

Les articles suivants concernant la procédure de l'élection n'ont subi que les modifications de forme rendues indispensables par la référence aux organes des Nations Unies ou, dans le texte anglais des articles 7, 9, et 12, pour assurer une plus exacte concordance avec le texte français.

Article 7.

Le Secrétaire général des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées; seules ces personnes sont éligibles, sauf le cas prévu à l'article 12, paragraphe 2.

Le Secrétaire général communique cette liste à l'Assemblée Générale et au Conseil de sécurité.

Article 8.

L'Assemblée Générale et le Conseil de Sécurité procèdent indépendamment l'un de l'autre à l'élection des Membres de la Cour.

Article 9.

Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent dans l'ensemble la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde.

Article 10.

(I) Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée Générale et dans le Conseil de sécurité.

(2) Au cas où le double scrutin de l'Assemblée Générale et du Conseil de Sécurité se porterait sur plus d'un ressortissant du même Etat ou Membre des Nations Unies, le plus âgé est seul élu.

Article 11.

Si, après la première séance d'élection, il reste encore des sièges à pourvoir, il sera procédé, de la même manière, à une seconde et, s'il est nécessaire, à une troisième.

Article 12.

(I) Si après la troisième séance d'élection, il reste encore des sièges à pourvoir, il peut être à tout moment formé sur la demande soit de l'Assemblée Générale soit du Conseil de sécurité, une Commission médiatrice de six Membres, nommés trois par l'Assemblée Générale et trois par le Conseil de sécurité, en vue de choisir pour chaque siège non pourvu un nom à présenter à l'adoption séparée de L'Assemblée Générale et du Conseil de sécurité.

(2) Peuvent être portées sur cette liste à l'unanimité toutes personnes satisfaisant aux conditions requises alors même qu'elles n'auraient pas figuré sur la liste de présentation visée aux articles 4 et 5.

(3) Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les Membres de la Cour déja nommés pourvoient aux sièges vacants, dans un délai à fixer par le Conseil de sécurité, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée Générale, soit dans le Conseil de sécurité.

(4) Si parmi les Juges il y a partage égal des voix, la voix du Juge le plus âgé l'emporte.

* * *

La Commission a estimé que la règle soumettant tous les neuf ans la Cour à un renouvellement intégral présentait, malgré la règle de rééligibilité des juges et la pratique, largement suivie en 1930, de la réélection, de sérieux inconvénients. Elle propose donc d'y substituer un système de renouvellement par tiers tous les trois ans. Cependant certains doutes paraissent subsister sur les modalités du système et celles-ci pourraient faire l'objet d'un examen nouveau en vue de rechercher si une solution ne pourrait pas être trouvée dans une voie différente qui consisterait, contrairement à ce que dit l'article 15, à fixer à neuf ans la durée des pouvoirs de tout juge en quelque circonstance qu'il soit élu.

Article 13.

(I) Les membres de la Cour sont élus pour neuf ans et seront rééligibles; sous la réserve, cependant, que, en ce qui concerne les juges nommés lors de la première élection de la Cour, les fonctions de cinq juges prendront fin au bout de trois ans, et celles de cinq autres juges prendront fin au bout de six ans.

(2) Les juges dont les fonctions prendront fin au terme des périodes initiales de trois et six ans ci-dessus mentionnées, seront désignés par tirage au sort effectué par le Secrétaire Général des Nations Unies, immédiatement après qu'il aura été porcédé à la première élection.

(3) Les Membres de la Cour restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déja saisis.

(4) En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire Général des Nations Unies. Cette transmission emporte vecance du siège.

* * *

A la fin de l'article 14 concernant la manière dont il sera pourvu à un siège devenu vacant, ont été supprimés les mots "dans sa premièere session", suppression motivée par le fait que le Conseil de sécurité est prévu comme devant être en session permanente.

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire Général des Nations Unies procèdera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de sécurité.

* * *

L'examen de l'article 15 a fourni l'occasion à plusieurs Délégations de proposer une limite d'âge pour les juges. Cette proposition n'a cependant pas été retenue par la Commission qui propose de maintenir sans les modifier les articles 15 et 16: la substitution dans le texte anglais de l'expression "shall be" au mot "is" n'entraîne aucun changement du texte français.

Article 15.

Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Article 16.

(I) Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2) En cas de doute, la Cour décide.

* * *

La Commission a estimé que, dans le texte anglais de l'article 17, par. 2, il y a lieu de supprimer les mots "an active" afin d'établir une conformité plus exacte avec le texte français: celui-ci n'a pas à être modifié. Il en est de même de la substitution de l'expression "shall be" au mot "is" dans le texte anglais de ce même article par. 3. Aucune modification n'est, d'autre part, apportée à l'art. 18 sinon au par. 2, celle qui découle de la mention du Secrétaire général des Nations Unies.

Article 17.

(I) Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2) Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3) En cas de doute, la Cour décide.

Article 18.

(I) Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2) Le Secrétaire général des Nations Unies en est officiellement informé par le Greffier.

(3) Cette communication emporte vacance du siège.

* * *

La Commission ne propose aucune modification à l'article 19 concernant l'octroi aux Membres de la Cour des privilèges et immunités diplomatiques. Toutefois elle signale que, dans la mesure où la Charte des Nations Unies aura réglé l'octroi de semblables privilèges et immunités aux représentants des Nations Unies et à leurs agents, il y aura lieu d'examiner l'opportunité et la manière de coordonner les dispositions de cet ordre.

Quant à l'article 20, il n'a paru appeler aucune modificatio

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

Article 20.

Tout membre de la Cour doit, avant d'entrer en fonction, en séance publique, prendre engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

* * *

Le par. 2 de l'article 21 a donné lieu à discussion par suit de la suggestion qui a ête faite d'autoriser la Cour à nommer, si elle le juge à propos, un Secrétaire Général à côté du Greffier. Certains ont paru redouter ce dualisme tandis que d'autres préféraient reconnaître à la Cour le pouvoir de nommer tels fonctionnaires dont elle estimerait avoir besoin; toutefois on n'a pas voulu imposer que tous les fonctionnaires dépendant d'elle fussent nommés par elle. Ces considérations diverses ont conduit à compléter ce paragraphe par une formule souple qui autorisera la Cour soit à nommer soit à charger tel autre d'effectuer la nomination.

Quant au par. 3 qui prenait soin d'affirmer la compatibilité entre les fonctions de Greffier de la Cour et celles de Secrétaire général de la Cour permanented'arbitrage, il a paru superflu et il a été supprimé.

Article 21.

(1) La Cour élit, pour trois ans, son Président et son Vice-Président; ils sont rééligibles.

(2) Elle nomme son Greffier et peut pourvoir à la nomination de tels autres fonctionnaires qui seraient nécessaires.

* * *

Le siège de la Cour étant maintenu à La Haye, il a paru convenable d'ajouter que la Cour, lorsqu'elle le jugerait désirable, pourrait décider de siéger en un autre lieu et d'y exercer, par suite, sa fonction: l'article 22 a été complété à cet effet.

Article 22.

(I) Le siège de la Cour est fixé à La Haye. Ceci, toutefois, n'empêchera pas la Cour de siéger en un autre lieu lorsqu'elle le jugera désirable.

(2) Le Président et le Greffier résident au siège de la Cour.

* * *

Après avoir examiné avec soin l'article 23 concernant les congés qui peuvent être accordés aux membres de la Cour dont les foyers sont très éloignés de La Haye, la Commission a retenu la rédaction de l'ancien article mais avec un paragraphe 2 conçu en termes généraux.

Elle ne propose pas de modifier les articles 24 et 25.

Article 23.

(1) La Cour reste toujours en fonctions, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

(2) Les membres de la Cour ont droit à des congés périodiques dont la date et la durée seront fixées par la Cour, en tenant compte de la distance qui sépare La Haye de leurs foyers.

(3) Les membres de la Cour seront tenus, à moin de congé régulier, d'empèchement pour cause de maladie ou autre motif grave dûment justifié auprés du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1) Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2) Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

(3) Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25.

(1) Sauf exception expressément prévue, la Cour exerce ses attritubions en séance plénière.

(2) Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Réglement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3) Toutefois le quorum de neuf est suffisant pour constituter la Cour.

* * *

Le Statut de la Cour permanente de Justice internationale a prescrit dans ses articles 26 et 27 l'institution, par la Cour, de Chambres spéciales pour les affaires concernant le travail et pour les affaires concernant le transit et les communications.

En fait ces Chambres ont bien été instituées, mais elles n'ont jamais fonctionné et il parait dès lors superflu de maintenir les dispositions qui les concernent. Mais il a paru utile d'autoriser la Cour à constituer, s'il y a lieu, d'une part, des Chambres chargées de connaître de certaines catégories d'affaires et l'on a repris, à cet égard, l'exemple des affaires en matière de travail, de transit et de communications, et d'autre part, de constituer une Chambre spéciale pour connaître d'une affaire déterminée.

Article 26.

(1) La Cour peut, à toute époque, constituer une ou plusieurs Chambres composées de 3 juges au moins selon ce qu'elle décidera, pour connaître de catégories déterminées d'affaires, par exemple d'affaires de travail et d'affaires concernant le transit et les communications.

(2) La Cour peut, à toute époque, constituer une Chambre pour connaître d'une affaire déterminée. Le nombre des juges de cette chambre sera fixé par la Cour avec l'assentiment des parties.

(3) Les chambres prévues au présent article statueront, si les parties le demandent.

* * *

Ces Chambres, ainsi que celle qui fera l'objet de l'article 29, rendront des décisions qui seront des décisions de la Cour. Elles pourront comme l'avait prévu l'ancien article 28 du Statut et comme cela deviendra la règle pour la Cour elle-même, en vertu du nouvel article, siéger ailleurs qu'à La Haye.

Article 27.

Tout arrêt rendu par l'une des chambres prévues aux articles 26 et 29 sera un arrêt de la Cour.

Article 28.

Les chambres prévues aux articles 26 et 29 peuvent, avec le consentement des parties en cause, siéger et exercer leurs fonctions ailleurs qu'à La Haye.

Quant à la Chambre de procédure sommaire instituée par l'article 29, elle est maintenue avec de simples rectifications de forme de cet article. Logiquement, celui-ci devrait prendre place un peu plus haut: il est laissé à cette place pour ne pas modifier le numérotage établi.

Article 29.

En vue de la prompte expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelée à statuer en procédure sommaire lorsque les parties le demandent Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger.

* * *

L'article 30 subit dans son paragraphe Ier des modifications qui n'altérent pas le sens que lui avait reconnu la Cour. Il y est ajouté une disposition autorisant la Cour à instituer soit pour elle-même soit dans ses Chambres des assesseurs n'ayant pas le droit de vote.

Article 30

(1) La Cour détermine par un réglement le mode suivant lequel elle exerce ses attributions. Elle règle notamment sa procédure.

(2) Le réglement de la Cour pourra prévoir des assesseurs siégeant à la Cour ou dans ses chambres, sans droit de vote.

* * *

La Commission a examiné s'il n'y avait pas lieu de simplifier, en la réduisant, la rédaction des paragraphes 2 et 3 de l'article 31 concernant la faculté pour une partie de nommer un juge national. Finalement elle n'a pas retenu cette suggestion et n'a apporté à cet article que de faibles modifications: l'une, au paragraphe 2, consiste à dire, dans le texte français "toute autre partie" au lieu de "l'autre partie" et dans le texte anglais "any other party" au lieu de "the other party": les autres, affectant seulement le texte anglais substituent dans les paragraphes 3, 5 et 6, aux termes antérieurement employés des termes meilleurs et correspondant mieux à la terminologie déjà adoptée dans le texte français.

Article 31.

(1) Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

(2) Si la Cour compte sur le siège un juge de la nationalité d'une des parties, toute autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

(3) Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent.

(4) La présente disposition s'applique dans le cas des articles 26, 27 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

(5) Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

(6) Les juges désignés, comme il est dit aux paragraphes 2, 3, et 4 du présent article, doivent satisfaire aux prescriptions des articles 2, 17, paragraphe 2, 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

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Sauf la substitution, dans le paragraphe 5 de l'article 32, de l'Assemblée générale des Nations Unies à l'Assemblée de la Société des Nations, cet article et l'article 33 concernant l'un et l'autre le régime financier de la Cour ne sont pas modifiés.

Article 32.

(1) Les membres de la Cour recoivent un traitement annuel.

(2) Le Président reçoit une allocation annuelle spéciale.

(3) Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4) Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5) Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale des Nations Unies. Ils ne peuvent être diminués pendant la durée des fonctions.

(6) Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

(7) Un réglement adopté par l'Assemblée générale fixe les conditions dans lesquel les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

(8) Les traitements, indemnités et allocations sont exempts de tout impôt.

Article 33.

Les frais de la Cour sont supportés par les Nations Unies de la manière que l'Assemblée générale décide.

CHAPITRE II

Competence de la Cour

L'article 34 énonçant la règle que seuls les Etats ou les Membres des Nations Unies sont justiciablesde la Cour, la Commission a jugé utile d'ajouter un second alinéa déterminant dans quelles conditions des renseignements relatifs aux affaires portées devant la Cour pourront être demandés par celle-ci à des organisations internationales publiques ou être présentés spontanément par ces organisations. Ce faisant, la Commission n'a pas voulu aller jusqu'à admettre, comme certaines délégations y paraissaient disposées, que des organisations internationales publiques pussent devenir parties en cause devant la Cour. Admettant seulement que ces organisations pourraient, dans la mesure indiquée, fournir des renseignements, elle a posé une règle que certains ont considérée comme étant de procédure plutôt que de compétence. La Commission, en la plaçant néanmoins à l'article 34, a entendu en marquer l'importance.

Article 34

(1) Seuls les Etats ou les Membres des Nations Unies ont qualité pour se présenter devant la Cour.

(2) La Cour, dans les conditions prescrites par son Réglement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle, et recevra également lesdits renseignements qui lui seraient présentés par ces organisations sur leur propre initiative."

En dehors des modifications de pure forme nécessitées par la référence à l'organisation des Nations Unies et non plus au Pacte de la Société des Nations, l'article 35 est rectifié seulement en ce que, dans le texte anglais du paragraphe 3, le mot "case" est substitué au mot "dispute" ce qui assurera une meilleure concordance avec le texte français.

Article 35

(1) La Cour est ouverte aux Membres des Nations Unies ainsi qu'aux Etats parties au présent Statut.

(2) Les conditions aux quelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3) Lorsqu'un Etat, qui n'est pas membre des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour."

* * *

La question de la juridiction obligatoire a été débattue dès la préparation initiale du Statut de la Cour. Admise par le Comité consultatif de Juristes, en 1920, elle a été écartée au cours de l'examen du projet de Statut par la Société des Nations pour faire place, sur l'initiative fructueuse d'un Jursconsulte brésilien, à une clause facultative permettant aux Etats d'accepter par avance la juridiction obligatoire de la Cour dans un domaine délimité par l'article 36. Ce débat a été repris et de très nombreuses délégations ont fait connaître leur désir de voir consacrer la juridiction obligatoire de la Cour par une clause insérée dans le Statut révisé en sorte que, celui-ci devant devenir partie intégrante de la Charte des Nations Unies, la juridiction obligatoire de la Cour serait un élément de l'organisation internationale qu'on se propose d'instituer à la Conférence de San Francisco. A s'en tenir aux préférences ainsi marquées, il ne parait pas douteux que la majorité de la Commission était en faveur de la juridiction obligatoire. Mais il a été relevé que, malgré ce sentiment prédominant, il ne paraissait pas certain, ni même probable que toutes les Nations dont la participation à l'organisation internationale projetée apparait comme nécessaire, fussent dès maintenant en situation d'accepter la règle de la juridiction obligatoire et que le projet de

Dumbarton Oaks ne paraissait pas la consacrer; certains, tout en conservant leurs préférences à cet égard, ont estimé que la prudence conseillait de ne pas dépasser le procédé de la clause facultative insérée dans l'article 36 et qui a ouvert la voie à l'adoption progressive, en moins de dix ans, de la juridiction obligatoire par de nombreux Etats qui, en 1920, se refusaient à y souscrire. Placé sur ce terrain, le problème s'est trouvé revêtir un caractère politique et la Commission a estimé qu'elle devait le déférer à la conférence de San Francisco.

Pour en faciliter l'examen, elle a cru devoir présenter pour mémoire plutôt qu'à titre de propositions, deux textes.

L'un est présenté pour le cas où la Conférence n'entendrait pas consacrer dans le Statut la compétence obligatoire de la Cour mais seulement ouvrir la voie à celle-ci en offrant aux Etats d'accepter, s'ils le jugent à propos, une clause facultative à ce sujet. Ce texte reproduit l'article 36 du Statut avec une addition pour le cas où la Charte des Nations Unies viendrait à faire quelque place à la juridiction obligatoire.

Le second texte, s'inspirant aussi de l'article 36 du Statut, établit directement la juridiction obligatoire sans passer par la voie d'une option que chaque Etat serait libre de faire ou de ne pas faire. Aussi est-il plus simple que le précédent. On a même relevé qu'il serait trop simple. La Commission a cependant pensé que le moment n'était pas encore venu de l'élaborer davantage et de rechercher si la juridiction obligatoire ainsi établie devrait s'accompagner de quelques réserves, telles que celle des différends appartenant au passé, celle des contestations nées au cours de la présente guerre, ou celles autorisées par l'Acte général d'arbitrage de 1928. Si le principe qu'énonce ce second texte était admis, celui-ci pourrait servir de base pour élaborer telles dispositions mettant en application le principe qu'il énonce avec les aménagements qui pourraient être jugés opportuns.

Article 36.

/(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations ou dans les traités et conventions en vigueur.

(2) Les membres des Nations Unies et Etats parties au présent Statut pourront, à n'importe quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou Etat acceptant la même obligation, la juridiction de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:

a) l'interprétation d'un traité;
b) tout point de droit international;
c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international.
d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

(3) La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

(4) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.]

Rédaction alternative:

Article 36.

[(1). La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi quâ tous les cas spécialement prévus dans la Charte des Nations Unies ou dans les traités et conventions en vigueur.

(2). Les Membres des Nations Unies et Etats parties au présent Statut reconnaissent entre eux comme obligatoire de plein droit et sans convention spéciale, la juridiction de la Cour sur tout différend d'ordre juridique ayant pour objet:

a) l'interprétation d'un traité:
b) tout point de droit international:
c) la réalité de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;
d) la nature ou l'entendue de la réparation due pour la rupture d'un engagement international.

(3). En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.]

Pour adapter à la situation nouvelle les dispositions de l'article 37, il sera nécessaire de dire que lorsqu'un traité ou une convention en vigueur vise le renvoi à une juridiction à établir par les Nations Unies, la Cour sera cette juridiction. Mais cela ne suffira pas: il faudra ajouter que c'est également cette Cour qui continue à constituer ou qui constituera la juridiction visée par tout traité donnant compétence à la Cour permanente de Justice internationale.

La forme à donner à cette seconde règle dépend du parti qui sera pris sur le point de savoir si la Cour régie par le Statut en voie l'élaboration sera considérée comme une Cour nouvelle ou la Cour instituée en 1920 et régie par un Statut qui datant d'alors, aura été revisé en 1945 comme il l'a été en 1929. Afin de ne pas préjuger la réponse que la Conférence de San Francisco aura à donner à propos de l'article Ier et pour marquer qu'en sa rédaction de 1920, l'article 37 serait insuffisant, la Commission a ici inscrit, pour mémoire, ledit article tel qu'il a été proposé dans le projet américain.

Il y a lieu de remarquer, d'ailleurs, que si la Cour qui sera régie par le présent Statut est considérée comme continuant à être la Cour instituée en 1920, la force de droit des nombreux actes internationaux généraux ou spéciaux, consacrant la juridiction obligatoire de cette Cour, subsistera. Que si, au contraire, la Cour est tenue pour une Cour nouvelle, l'ancienne disparaissant, lesdits engagements risqueront d'etre considerée comme caducs, leur remise en vigueur sera malaisée, un progrès du droit se trouvera ainsi abandonné ou gravement compromis.

Article 37.

[Lorsqu'un traité ou une convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou les Nations Unies, la Cour constituera cette juridiction.]

* * *

L'article 38 qui détermine, selon ses termes, ce que la Cour "applique" a suscité plus de controverses dans la doctrine que de difficultés dans la pratique. La Commission a estimé que trop de tâches immédiates dont il importe d'assurer le bon achèvement s'imposaient à la Conférence de San Francisco pour qu'il fût opportun d'entreprendre la revision de cet article. Pour sa mise en oeuvre, elle a fait confiance à la Cour et elle l'a laissé sans autre changement que celui qui apparaît dans le numérotage des dispositions de cet article.

Article 38.

(1 La Cour applique:

(a) les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige:

(b) la coutume internationale comme preuve d'une pratique générale acceptée comme étant le droit;

(c) les principes généraux de droit reconnus par les nations civilisées;

(d) sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

(2) La présente disposition ne porte pas atteinte à la faculté pour la Cour, si les parties sont d'accord, de statuer ex aequo et bono.

CHAPITRE III

Procedure.

Les dispositions du Statut concernant les langues officielles de la Cour ne sont modifiées que pour préciser, conformément à la pratique, que la Cour, à la demande d'une partie, autorisera celle-ci à se servir d'une autre langue.

Article 39.

(1) Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

(2) A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

(3) La Cour, à la demande de toute partie, autorisera l'emploi, par cette partie, d'une langue autre que le français ou l'anglais.

* * *

Dans les autres dispositions du Statut relatives à la procédure, la Commission n'a pas cru devoir proposer d'innovations importantes. En matière de mesures conservatoires, elle a estimé que l'indication de ces mesures devrait être notifiée au Conseil de Sécurité comme elles devaient l'être auparavant au Conseil de la Société des Nations (article 41).

Elle a jugé à propos, d'autre part, d'améliorer la concordance entre les deux textes du Statut en modifiant quelques expressions dans le texte anglais des articles 47, par. 2 et 55, par. 1 et 2, sans qu'il y ait eu à modifier le texte français. Les articles 40 à 56 se présentent, en conséquence comme suit:

Article 40

(1) Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffier; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

(2) Le Greffier donne immédiatement communication de la requête à tous intéressés.

(3) Il en informe également les Membres des Nations Unies par l'entremise du Secrétaire Général, ainsi que les Etats admis à ester en justice devant la Cour.

Article 41

(1) La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

(2) En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42

(1) Les parties sont représentées par des agents.

(2) Elles peuvent se faire assister devant la Cour par des conseils ou des avocats.

Article 43

(1) La procédure a deux phases: l'une écrite, l'autre orale.

(2) La procédure écrite comprend la communication à juge et à partie des mémoires, des contre-mémoires, et, éventuellement, des répliques, ainsi que de toute pièce et document à l'appui.

(3) La communication se fait par l'entremise du Greffe dans l'ordre et les délais déterminés par la cour.

(4) Toute pièce produite par l'une des parties doit être communiquée à l'autre en copie certifiée conforme.

(5) La procédure orale consiste dans l'audition par la Cour des témoins, experts agents, conseils et avocats.

Article 44.

(1) Pour toute notification à faire à d'autres personnes que les agents, conseils et avocats, la Cour s'adresse directement au gouvernement de l'Etat sur le territoire du quel la notification doit produire effet.

(2) Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuves.

Article 45

Les débats sont dirigés par le Président et à défaut de celui-ci par le Vice-Président: en cas d'empêchement, par le plus ancien des juges présents.

Article 46

L'audience est publique, à moins qu'il n'en soit autrement décidé par la Cour ou que les deux parties ne demandent que le public ne soit pas admis.

Article 47

(1) Il est tenu de chaque audience un procès-verbal signé par le Greffier et le Président.

(2) Ce procès-verbal a seul caractère authentique.

Article 48

La Cour rend des ordonnances pour la direction du procès, la détermination des formes et délais dans lesquels chaque partie doit finalement conclure; elle prend toutes les mesures que comporte l'administration des preuves.

Article 49.

La Cour peut, même avant tout dèbat, demander aux agents de produire tout document et de fournir toutes explications. En cas de refus, elle en prend acte.

Article 50.

A tout moment la Cour peut confier une enquête ou une expertise à toute personne, corps, bureau, commission ou organe de son choix.

Article 51.

Au cours des débats, toutes questions utiles sont posées aux témoins et experts dans les conditions que fixera la Cour dans le réglement visé à l'article 30.

Article 52.

Après avoir reçu les preuves et tèmoignages dans les délais dèterminés par elle, la Cour peut écarter toutes dépositions ou documents nouveaux qu'une des parties voudrait lui présenter sans l'assentiment de l'autre.

Article 53.

(1) Lorsqu'une des parties ne se présente pas, ou s'abstient de faire valoir sesmoyens, l'autre partie peut demander à la Cour de lui adjuger ses conclusions.

(2) La Cour, avant d'y faire droit, doit s'assurer non seulement qu'elle a compétence aux termes des articles 36 et 37, mais que les conclusions sont fondées en fait et en droit.

Article 54.

(1) Quand les agents, avocats et conseils ont fait valoir, sous le contrôle de la Cour, tous les moyens qu'ils jugent utiles, le Président prononce la clôture des débats.

(2) La Cour se retire en Chambre du Conseil pour délibérer.

(3) Les délibérations de la Cour sont et restent secrètes.

Article 55.

Les décisions de la Cour sont prises à la majorité des juges présents.

En cas de partage de voix, la voix du Président ou de celui qui le remplace est prépondérante.

Article 56.

L'arrêt est motivé.

Il mentionne lesnoms des juges qui y ont pris part.

* * *

Une innovation qui, au surplus, confirme la pratique est introduite dans l'article 57, paragraphe 1, qui consacre au profit non seulement du juge dissident mais de tout juge le droit de joindre à l'arrêt l'exposé de son opinion individuelle.

Article 57.

"Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, tout juge aura le droit d'y joindre L'exposé de son opinion individuelle"

Les articles 58 à 64 ne comportent aucun changement dans le texte français; lesrectifications de forme apportées au texte anglais des articles 61 (substitution de: judgment à: sentence, dans le paragraphe 5) et 62, paragraphe 1 (suppression des mots: as a third party) n'en altèrent pas le sens.

Article 58.

L'arrêt est signé par le Président et par le Greffier. Il est lu en séance publique, les agents dûment prévenus.

Article 59.

La décision de la Cour n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé.

Article 60.

L'arrêt est définitif et sans recours. En cas de contestation sur le sens et la portée de L'arrêt, il appartient à la Cour de l'interpréter à la demande de toute partie.

Article 61.

(1) La revision de l'arrêt ne peut être eventuellement demandée à la Cour qu'a raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, était inconnu de la Cour et de la partie qui demande la revision, sans qu'il y ait, de sa part, faute à l'ignorer.

(2) La procédure de revision s'ouvre par un arrêt de la Cour constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la revision, et déclarant de ce chef la demande recevable.

(3) La Cour peut subordonner l'ouverture de la procédure en revision à l'exécution préalable de l'arrêt.

(4) La demande en revision devra être formée au plus tard dans le délai de six mois après la découverte du fait nouveau.

(5) Aucune demande de revision ne pourra être formée après l'expiration d'un délai de dix ans à dater de l'arrêt.

Article 62.

(1) Lorsqu'un Etat estime que dans un différend un intérêt d'ordre juridique est pour lui en cause, il peut adresser à la Cour une requête, à fin d'intervention.

(2) La Cour décide.

Article 63.

(1) Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffier les avertit sans délai.

(2) Chacun d'eux a le droit d'intervenir au procès, et s'il exerce cette faculté, l'interprétation contenue dans la sentence est également obligatoire à son égard.

Article 64.

S'il n'en est autrement décidé par la Cour, chaque partie supporte ses frais de procédure.

CHAPITRE IV

Avis Consultaties

Il appartient à la Charte des Nations Unies de déterminer quels organes de celles-ci auront qualité pour saisir la Cour d'une demande d'avis consultatif. Dépassant les termes du projet de Dumbarton Oaks, la Commission a cru pouvoir présumer, avec une réserve de forme, d'ailleurs, que cette faculté serait ouverte non seulement au Conseil de Sécurité mais aussi à l'Assemblée Générale et c'est sur cette base qu'elle a déterminé comment la demande serait présentée. En dehors de cela les modifications apportées aux articles 65 à 68 sont de pure forme et n'appellent aucun commentaire,

Article 65.

(1) Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par

(Le Président de l'Assemblée Générale ou) le Président du Conseil de Securité, soit par le Secrétaire Général des Nations Unies agissant en vertu d'instructions (de l'Assemblée Générale ou) du Conseil de Sécurité.

(2) La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

* * *

Il a été suggéré de transporter dans le Statut les dispositions du Règlement de la Cour (article 67) concernant les recours exercés devant la Cour. Mais il a été observé que ces dispositions concernent seulement la procédure et ont, par suite, leur place dans le règlement. Le rôle de la Cour comme instance d'appel est gouverné par les règles régissant sa juridiction. En conséquence, la suggestion ci-dessus rappelée n'a pas été retenue.

Article 66.

(1) Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres des Nations Unies par l'entremise du Secrétaire Général des Nations Unies, aussi qu'aux Etats admis à ester en justice devant la Cour.

(2) En outre, à tout Membre des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siège pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

(3) Si un des Membres des Nations Unies ou des Etats admis à ester devant la Cour, n'ayant pas été l'objet de la communication spéciale visée au paragraphe (2) du présent article, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

(4) Les Membres, Etats ou organisations qui ont présenté des exposée écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Article 67.

La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire Général des Nations Unies et les représentants des Membres des Nations Unies, des Etats et des organisations internationales directement intéressés étant prévenus.

Article 68.

Dans l'exercice des ses attributions consultatives, la Cour s'inspirera en outre des dispositions du présent Statut qui s'appliquent en matière contentieuse, dans la mesure où elle les reconnaîtra applicables.

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CHAPITRE V

Amendements

Le Gouvernement américain ayant proposé de convenir d'une procédure spéciale d'amendement du Statut de la Cour, cette proposition est apparue comme de nature à combler une lacune regrettable du Statut, lacune dont l'inconvénient s'est déjà fait sentir dans le passé. La Commission a modifié la proposition américaine pour la mettre en conformité avec la disposition correspondante proposée à Dumbarton Oaks pour prendre place dans la Charte des Nations Unies. La proposition de la Commission est subordonnée à ce qui sera décidé à San Francisco pour la modification de la Charte elle-même. Tout en tenant sa proposition pour provisoire à ce titre, la Commission a cru devoir la rédiger en raison de l'importance qu'elle attache à une disposition de cet ordre.

Article 69.

Les amendements au présent Statut entreront en vigueur pour toutes les parties au Statut quand ils auront été adoptés par une majorité des deux tiers des membres de l'assemblée générale et ratifiés, selon leur procédure constitutionnelle, par les Etats ayant un siège permanent au Conseil de sécurité et la majorité des autres parties au présent Statut.

* * *

Un membre de la Commission a attiré l'attention de celle-ci sur l'importance que présente pour le règne du droit et le maintien de la paix l'exacte exécution des arrêts de la Cour et il se demandait si le Statut ne devrait pas contenir une disposition concernant les moyens propres à assurer cet effet. L'importance de cette suggestion n'a pas été contestée, mais la remarque a été faite qu'il n'appartenait pas à la Cour d'assurer elle-même l'exécution de ses arrêts, que l'affaire concerne plutôt le Conseil de sécurité et que l'article 13, paragraphe 4, du Pacte s'était référé sur ce point au Conseil de la Société des Nations. Une disposition de cet ordre n'a donc pas à figurer dans le Statut, mais l'attention de la Conférence de San Francisco doit être attirée sur le grand intérêt qui s'attache à régler ce point dans la Charte des Nations Unies.

* * *

En présentant les dispositions ci-dessus énoncées et expliquées, la Commission estime qu'elle a accompli la tâche qui lui incombait et qui était de préparer un projet de Statut en vue de son examen par la Conférence des Nations Unies. Elle ne peut cependant perdre de vue que nombreuses sont, parmi les Nations Unies, celles qui sont parties au Statut de la Cour établi en 1920 et révisé en 1929 et que, par là, elles sont liées non seulement entre elles mais aussi envers des Etats qui ne figurent pas parmi les Nations Unies. D'où l'obligation pour elles de régler la situation se présentant à ce titre entre elles et ces Etats. Ce règlement n'était pas du ressort de la Commission: elle n'a pas entendu le préjuger. Il convient cependant de rappeler que pour construire une institution de Justice internationale les voies régulières s'imposent.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 61 (revised)
G/49
April 20, 1945

REPORT

ON DRAFT OF

STATUTE OF AN INTERNATIONAL COURT OF JUSTICE

REFERRED TO IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS

SUBMITTED BY THE
UNITED NATIONS COMMITTEE OF JURISTS
TO THE
UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION
AT SAN FRANCISCO

(Washington, D. C., April 20, 1945)

The Dumbarton Oaks Proposals having provided that The United Nations International Organization should include among its principal organs, an International Court of Justice, a Committee of Jurists designated by The United Nations met in Washington for the purpose of preparing and submitting to the San Francisco Conference a draft Statute of the said Court. The present report has for its purpose to present the result of the work of this Committee. It could not in any way whatsoever prejudice the decisions of the Conference. The jurists who have drawn it up have, in so doing, acted as jurists without binding the Governments which appointed them.

The Dumbarton Oaks Proposals provided that the Court would be the principal judicial organ of The United Nations, that its Statute, annexed to The United Nations Charter, would be an integral part thereof and that all the Members of the International Organization should ipso facto be parties to the Statute of the Court. It did not decide whether the said Court would be the Permanent Court of International Justice, the Statute of which would be preserved with amendments, or whether it would be a new Court the Statute of which would, however, be based on the Statute of the existing Court. In the preparation of its draft, the Committee adopted the method, and it was recalled before it that the Permanent Court of International Justice had functioned for twenty years to the satisfaction of the litigants and that, if violence had suspended its activity, at least this institution had not failed in its task.

Nevertheless, the Committee considered that it was for the San Francisco Conference (1) to determine in what form the mission of the Court to be the principal judicial organ of The United Nations shall be stated, (2) to judge whether it is necessary to recall, in this connection, the present or possible existence of other international courts, (3) to consider the Court as a new court or as the continuance of the Court established in 1920, the Statue of which, revised for the first time in 1929, will again be revised in 1945. These are not questions of pure form; the last, in particular, affects the operation of numerous treaties containing reference to the jurisdiction of the Permanent Court of International Justice.

For these reasons the draft Statue gives no wording for what is to be Article 1 of the latter.

DRAFT STATUTE

Article 1

/For reasons stated in the accompanying Report, the text of Article 1 has been left in blank pending decision by The United Nations Conference at San Francisco./

The Committee has proceeded to a revision, article by article, of the Statute of the Permanent Court of International Justice. This revision consisted, on the one hand, in the effecting of certain adaptations of form rendered necessary by the substitution of The United Nations for the League of Nations; on the other hand, in the introduction of certain changes judged desirable and now possible. With regard to this second point, moreover, the Committee has considered that it was better to postpone certain amendments than to compromise by excessive haste the success of the present project for an International Organization, this even in consideration of the eminent function pertaining to the Court in a world organization which The United Nations intend to construct in such manner that peace for all and the rights of each one may be effectively assured. It has happened many times that this examination has led the Committee to propose retaining such or such Articles of the Statute without change. However, the Committee has deemed it useful to number the paragraphs of each article of the Statute, whether changed or not.

CHAPTER I
Organization of the Court

The Committee has introduced only one modification in Article 2. Despite the respect attaching to the name of The Permanent Court of International Justice, it has eliminated that name from this Article in order not to prejudice in any way the decision which is to be made with regard to Article I: this elimination may be only provisional.

* * *

Article 2.

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons enjoying the highest moral esteem, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurists of recognized competence in international law.

* * *

Although the proposal has been made to reduce the number of the members of the Court either preserving the general structure thereof, or changing it, the Committee has deemed it preferable to preserve both this structure and the number of judges which in 1929 was made fifteen. It has been pointed out that, thereby, the interest taken in the Court in the different countries would be increased and that the creation of chambers within the Court would be facilitated. A member of the Committee suggested that that would permit the representation of different types of civilization. On the other hand, the Committee has seen fit to establish directly in this Article the rule derived indirectly from another provision and which does not permit a State or Member of The United Nations to number more than one of its nationals among the members of the Court.

Article 3

The Court shall consist of fifteen members, no two of whom may be nationals of the same State or Member of The United Nations.

* * *

For the election of the judges it is provided, in accordance with what seems to be the spirit of the Dumbarton Oaks Proposals, to have it done by the General Assembly of The United Nations and the Security Council, leaving to these the task of determining how a state which, while accepting the Statute of the Court, is not a Member of The United Nations, may participate in the election. The method of nomination with a view to this election has given rise to an extensive debate, certain delegations having advocated nomination by the Governments instead of entrusting such designation to the national groups in the Permanent Court of Arbitration as has been established in the present Statute; the continuance of the present regime has been defended as introducing a non-political influence at this point of the procedure for the election of the judges. In the debate, at the moment of the vote, the Committee was divided without a majority being clearly shown. Afterward a compromise suggestion was presented by the Delegate of Turkey; it would have consisted in giving the Government the power of not transmitting the nominations of candidates decided upon by the national group, this disagreement depriving the country concerned of the exercise of the right to nominate candidates for the election in question.

The Committee deemed it fitting to submit two drafts on this point. One, retaining the nomination by the national groups of the Permanent Court of Arbitration, maintained with mere formal improvements Articles 4, 5, and 6 of the Statute; the other modifies them in order to provide rules for the nominations of candidates by the Governments.

The procedure to be followed for the designation of candidates by the national groups is retained with no other change than that consisting in specifying that the groups called upon to participate in such designation are the groups belonging to the States which are parties to this Statute.

Article 4	Article 4
(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.	(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated in accordance with Articles 5 and 6.
(2) In the case of Members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members	(2) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly

of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.	on the proposal of the Security Council.
(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.	
Article 5 (1) At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.	Article 5 At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the Governments of Members of the United Nations and of States parties to the present Statute inviting each of them to undertake, within a given time, the nomination of a person of their own nationality in a position to accept the duties of a member of the Court.
(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.	

Article 6.	Article 6.
Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.	Before making these nominations, each Government is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7.

(1) The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12 (2), these shall be the only persons eligible.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.	Article 10.
(1) Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.	Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

(1) If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

(3) If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

(4) In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

* * *

The Committee has felt that the rule subjecting the Court to a complete renewal every nine years presented serious drawbacks, despite the rule of the re-eligibility of the judges, and the practice, widely followed in 1930, of re-election. Hence it proposes to substitute therefor a system of renewal by one-third every three years. However, certain doubts appear to remain regarding the methods of the system, and these might be made the subject of a further examination with a view to determining whether a solution could not be found in some other way which would consist, contrary to what is said in Article 15, in fixing at nine years the duration of the term of any judge, no matter the circumstances under which he is elected.

Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected, provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of The United Nations immediately after the first election has been completed.

(3) The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

* * *

At the close of Article 14, concerning the way in which a place that has become vacant is to be filled, the words "at its next session" have been eliminated, the reason for this being the fact that the Security Council is to be in session permanently.

Article 14.

Vacancies shall be filled by the same method as that laid down for the first election, subject t the following provision: the Secretary-General of The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

* * *

The Committee has felt that, in the English text of Article 17, par. 2, it is well to eliminate the words "an actove", in order to establish closer conformity with the French text: the latter has not been changed. The same is true of the substitution of the expression "shall be" for the word "is" in the English text of the same article, paragraph 3. Besides, no change is made in Art. 18 except in par. 2, which arises from the mention of the Secretary-General of The United Nations.

Examination of Article 15 has provided an occasion for several delegations to propose an age limit for judges. However, this proposal was not supported by the Committee, which proposes to retain Articles 15 and 16 without changing them: the substitution in the English text of the expression "shall be" for the word "is" does not involve any change in the French text.

Article 15.

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16.

(1) No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

(2) Any doubt on this point shall be settled by the decision of the Court.

* * *

The Committee has felt that in the English text of Article 17, (2), there should be eliminated the words "an active" in order to establish more exact conformity with the French text: the latter has not been changed. The same is true of the substitution of the expression "shall be" for the word "is" in the English text of the same article, paragraph (3). On the other hand, no change is made in Article 18 except in paragraph (2), which is due to the mention of the Secretary-General of The United Nations.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3) Any doubt on this point shall be settled by the decision of the Court.

Article 18

(1) No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of The United Nations by the Registrar.

(3) This notification makes the place vacant.

* * *

The Committee does not propose any change in Article 19 concerning the granting of diplomatic privileges and immunities to members of the Court. However, it points out that, insofar as The United Naitions Charter regulates the granting of such privileges and immunities to the representatives of The United Nations and their agents, it will be well to examine the opportuneness and the way of coordinating the regulations of this nature.

As to Article 20, it has not appeared to call for any change.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

/Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter./

Article 20.

Every member of the Court shall, before taking up his duties. make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

* * *

Par. 2 of Article 21 has given rise to discussion in consequence of the suggestion that has been made to authorize the Court to appoint, if it sees fit, a Secretary-General in addition to the Registrar. Some have appeared to fear this duality, while others would prefer to grant to the Court the power to appoint such officers as it considers necessary; however, it was not desired to require that all officers under it be appointed by it. These various considerations led to the completing of this paragraph by a flexible formula that will authorize the Court either to appoint or to delegate the making of the appointment.

As to paragraph (3), which asserted the compatibility of the function of the Registrar of the Court and those of the Secretary-General of the Permanent Court of Arbitration, it appeared superfluous and has been eliminated.

Article 21.

(1) The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

⁂

As the seat of the Court is kept at The Hague, it has appeared proper to add that the Court, when it considers it desirable, may decide to sit at some other place and consequently to exercise its functions there. Article 22 has been completed to that effect.

Article 22

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

(2) The President and Registrar shall reside at the seat of the Court.

⁂

After having carefully examined Article 23, concerning the leaves which may be granted to the Members of the Court whose homes are far distant from The Hague, the Committee has retained the wording of the old article, but with a paragraph 2 couched in general terms.

It does not propose to modify Articles 24 and 25.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending

by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

(1) If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1) The full Court shall sit except when it is expressly provided otherwise.

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

***

The Statute of the Permanent Court of International Justice prescribed in its Articles 26 and 27 the establishment, by the Court, of special Chambers for cases relating to labor and for cases relating to transit and communications.

As a matter of fact, these Chambers were indeed established, but they never functioned, and it appears henceforth superfluous to retain the provisions concerning them. But it has appeared advisable to authorize the Court to establish, if necessary, on the one hand, Chambers dealing with particular categories of cases, and the precedent of cases relating to labor, transit and communications has been revived, in this connection, and on the other hand, to the request of the parties, to establish a special Chamber to deal with a particular case. The Committee has believed that this change might facilitate, under certain circumstances, recourse to that jurisdiction.

Article 26.

(1) The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

* * *

These Chambers, as well as those which will form the subject of Article 29, will render decisions which will be decisions of the Court as already stated in Article 13 of the regulations of the Court. They may, as provided for by the old Article 28 of the Statute, and as will become the rule for the Court itself, by virtue of the new article, sit elsewhere than at The Hague.

Article 27.

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

* * *

As for the Chamber for summary procedure established by Article 29, it is retained with mere formal amendations of this article. Logically, the latter should be inserted somewhat above: it is left at this place in order not to change the established numbering.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five

judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

* * *

Article 30 has undergone in Paragraph 1 changes that do not alter the sense which had been given it by the Court. A provision is added thereto authorizing the Court to introduce either for itself or in its Chambers assessors without the right to vote. Provision had formerly been made for assessors in the Chambers; it has been considered advisable to extend it to the Court itself.

Article 30.

(1) The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

* * *

The Committee has examined whether it was not necessary to simplify, by shortening it, the text of Paragraphs 2 and 3 of Article 31 concerning the right of a party to appoint a judge of his nationality. In the end it did not retain this suggestion and made only slight changes in this article: one, in Paragraph 2, consists in saying, in the French text: "toute autre partie" instead of "l'autre partie" and in the English text "any other party" instead of "the other party"; the others, affecting the English text only, substitute, in Paragraphs 3, 5, and 6, for the terms previously employed, better terms corresponding better with the terminology already adopted in the French text.

Article 31.

(1) Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2) If the Court includes upon the bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to choose a judge as provided in paragraph (2) of this Article.

(4) The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

(6) Judges chosen as laid down in paragraphs (2), (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17(2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

* * *

Except for the substitution, in Paragraph 5 of Article 32, of the General Assembly of The United Nations for the Assembly of the League of Nations, this Article and Article 33, both concerning the financial system of the Court, are not changed.

Article 32.

(1) Each member of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

(3) The Vice-President shall receive a special allowance for every day on which he acts as President.

(4) The judges appointed under Article 31, other than members of the Court, shall receive indemnities for each day on which they exercise their functions.

(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of the United Nations. They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

Article 33.

The expenses of the Court shall be borne by The United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

Competence Of The Court

Since Article 34 states the rule that only States or Members of The United Nations are justiciable in the Court, the Committee has deemed it advisable to add a second paragraph fixing under what conditions information relative to the cases brought before the Court may be requested by the latter from public international organizations or be presented by such organizations on their own initiative. In so doing, the Committee has not wished to go so far as to admit, as certain delegations appear disposed to do, that public international organizations may become parties to a case before the Court. Admitting only that such organizations might, to the extent indicated, furnish information, it has laid down a rule which certain persons have considered as being one of procedure rather than of competence. The Committee, by placing it nevertheless in Article 34, has intended to emphasize its importance.

Article 34.

(1) Only States or Members of The United Nations may be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

* * *

Aside from the purely formal changes necessitated by references to The United Nations Organization instead of to the Covenant of the League of Nations, Article 35 is amended only in that, in the English text of paragraph 3, the word "case" is substituted for the word "dispute" which will assure better agreement with the French text.

Article 35.

(1) The Court shall be open to the Members of The United Nations and also to States parties to the present Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security

Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of The United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

* * *

The question of compulsory jurisdiction was debated at the time of the initial preparation of the Statute of the Court. Admitted by the Advisory Committee of Jurists, in 1920, compulsory jurisdiction was rejected in the course of the examination of the draft Statute by the League of Nations to yield place, on the successful initiative of a Brazilian jurist, to an optional clause permitting the States to accept in advance the compulsory jurisdiction of the Court in a domain delimited by Article 36. This debate has been resumed and very many delegations have made known their desire to see the compulsory jurisdiction of the Court affirmed by a clause inserted in the revised Statute so that, as the latter is to become an integral part of The United Nations Charter, the compulsory jurisdiction of the Court would be an element of the International Organization which it is proposed to institute at the San Francisco Conference. Judging from the preferences thus indicated, it does not seem doubtful that the majority of the Committee was in favor of compulsory jurisdiction, but it has been noted that, in spite of this predominant sentiment, it did not seem certain, nor even probable, that all the nations whose participation in the proposed International Organization appears as necessary, were now in a position to accept the rule of compulsory jurisdiction, and that the Dumbarton Oaks Proposals did not seem to affirm it; some, while retaining their preferences in this respect, thought that the counsel of prudence was not to go beyond the procedure of the optional clause inserted in Article 36, which has opened the way to the progressive adoption, in less than 10 years, of compulsory jurisdiction by many States which in 1920 refused to subscribe to it. Placed on this basis, the problem was found to assume a political character, and the Committee thought that it should defer it to the San Francisco Conference.

The suggestion was made by the Egyptian delegation to seek a provisional solution in a system which while adopting compulsory jurisdiction as the compulsory rule would permit each State to escape it by a reservation. Rather than accept this view, the Committee has preferred to facilitate the consideration of the question by submitting two texts as suggestions rather than as a recommendation.

One is submitted in case the Conference should not intend to affirm in the Statute the compulsory jurisdiction of the Court, but only to open the way for it by offering the States, if they did not think it apropos, acceptance of an optional clause on this subject. This text reproduces Article 36 of the Statute with an addition in case The United Nations Charter should make some provision for compulsory jurisdiction.

The second text, also based on Article 36 of the Statute, establishes compulsory jurisdiction directly without passing through the channel of an option which each State would be free to take or not take. Thus it is simpler than the preceding one. It has even been pointed out that it would be too simple. The Committee, however, thought that the moment had not yet come to elaborate it further and see whether the compulsory jurisdiction thus established should be accompanied by some reservations, such as one concerning differences belonging to the past, one concerning disputes which have arisen in the present war, or those authorized by the General Arbitration Act of 1928. If the principle enunciated by this second text were accepted, it could serve as a basis for working out such provisions applying the principle which it enunciates with such modifications as might be deemed opportune.

Some delegations desired to see inserted in Article 36 (1) the specific statement that the jurisdiction of the Court extends to "justiciable" matters or those "of a legal nature" which the parties might submit to it. Objections were made to the insertion of such a specific statement in a provision covering the case in which the jurisdiction of the Court depends on the agreement of the parties. Some refused to restrict in this way the jurisdiction of the Court. Fears were also expressed regarding difficulties in interpretation which such a provision might cause, whereas practice has not shown any serious difficulties in the application of Article 36 (1). So it was not changed as indicated.

Article 36.

[The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.]

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations	[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations

or in treaties and conventions in force.	or in treaties and conventions in force.
(2) The Members of The United Nations and the States parties to the present Statute may at any time declare that they recognize as compulsory _ipso facto_ and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:	(2) The Members of The United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory _ipso facto_ and without special agreement in any legal dispute concerning:
(a) the interpretation of a treaty;	(a) the interpretation of a treaty; or
(b) any question of international law;	(b) any question of international law; or
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;	(c) the existence of any fact which, if established, would constitute a breach of an international obligation; or
(d) the nature or extent of the reparation to be made for the breach of an international obligation.	(d) the nature or extent of the reparation to be made for the breach of an international obligation.
(3) The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.	
(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.]	(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.]

* * *

In order to adapt the provisions of Article 37 to the new situation, it will be necessary to say that when a treaty or a convention in force contemplates reference to a tribunal to be established by The United Nations, the Court shall be that tribunal. But that will not suffice: it must be added that it is also the Court which continues to constitute or which will constitute the tribunal contemplated by any treaty giving competence to the Permanent Court of International Justice.

The form to be given to this second rule depends on the decision which is made on the question of whether the Court governed by the Statute in preparation is considered as a new Court or the Court instituted in 1920 and governed by a Statute which, dating from that year, has been revised in 1945 as it was in 1929. In order not to prejudge the reply which the San Francisco Conference will have to give apropos of Article 1 and to show that in its 1920 text Article 37 is thought to be insufficient, the Committee has herein recorded, for consideration, the said article as proposed in the American draft.

It should be observed, moreover, that if the Court which will be governed by the present Statute is considered as a continuation of the Court instituted in 1920, the force of law of the numerous general or special international acts affirming the compulsory jurisdiction of this Court will subsist, that if, on the contrary, the Court is held to be a new Court, the former one disappearing, it could be argued that the said obligations will run the risk of being considered null and void, their restoration to force will not be easy, an advance in law will thus be abandoned or seriously endangered.

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court shall be such tribunal.

/Subject to reconsideration after the adoption of a text of Article 1./

* * *

Article 38, which determines, according to its terms, what the Court "shall apply" has given rise to more controversies in doctrine than difficulties in practice. The Committee thought that it was not the opportune time to undertake the revision of the said article. It has trusted to the Court to put it into operation, and has left it without change other than that which appears in the numbering of the provisions of this article.

Article 38.

(1) The Court shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

The provisions of the Statute concerning the official languages of the Court are modified only to specify, in conformity with practice, that the Court, at the request of a party, shall authorize such party to use another language.

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

(3) The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

In the other provisions of the Statute relative to procedure, the Committee did not think it should propose important innovations. These provisions, based directly on those of The Hague Conventions, have given satisfaction in practice. In the matter of provisional measures, it considered that the indication of such measures ought to be notified to the Security Council as formerly they had to be to the Council of the League of Nations (Article 41).

It thought it opportune, moreover, to improve the agreement between the two texts of the Statute by changing certain expressions in the English text of Articles 43, (2) 47, (2) and 55, (1) and (2) without its being necessary to change the French text. Articles 40 to 56, accordingly, now read as follows:

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties shall be indicated.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

(2) Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.

Article 43.

(1) The procedure shall consist of two parts: written and oral.

(2) The written proceedings shall consist of the communications to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3) These communications shall be made through the Registrat, in the order and within the time fixed by the Court.

(4) A certified copy of every document produced by one party shall be communicated to the other party.

(5) The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1) For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2) The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

(1) Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2) These minutes alone shall be authentic.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

(1) Whenever one of the parties does not appear before the Court, or fails to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2) The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

(3) The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1) All questions shall be decided by a majority of the judges present.

(2) In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56.

(1) The judgment shall state the reasons on which it is based.

(2) It shall contain the names of the judges who have taken part in the decision.

* * *

An innovation which, furthermore, confirms practice, has been introduced in Article 57, (1) which provides for the benefit not only of the dissenting judge but of any judge, the right to annex to the decision the statement of his individual opinion.

Article 57.

If the judgment does not represent in whole or in part the unaminous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Articles 58 to 64 contain no change in the French text; the formal emendations made in the English text of Articles 61 (substitution of "judgment" for "sentence" in paragraph 5) and 62, paragraph 1 (elimination of the words: "as a third party") do not change the sense thereof.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

(1) An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2) The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3) The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4) The application for revision must be made at latest within six months of the discovery of the new fact.

(5) No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62.

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene

(2) It shall be for the Court to decide upon this request.

Article 63.

(1) Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

Advisory Opinions

It is for the Charter of The United Nations to determine what organs of the latter shall be qualified to lay before the Court a request for an advisory opinion. Without this having been stated in the Dumbarton Oaks Proposals, the Committee has believed that it might presume, moreover, that this power would be open not only to the Security Council but also to the General Assembly, and it is on that basis that it has determined how the application should be submitted. The suggestion has been made to allow international organizations and, even to a certain extent, States to ask for advisory opinions. The Commission did not believe that it should adopt it. Aside from that, the changes made in Articles 65 to 68 are purely formal and do not call for any comment.

CHAPTER IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of The United Nations, through the Secretary-General of The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3) Should any Member of The United Nations or State entitled to appear before the Court have failed to receive the special communication referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4) Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of The United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

* * *

It has been suggested that the provisions of the Court Rules (Article 67) concerning appeals brought before the Court be transferred to the Statute. But it has been observed that those provisions have to do with procedure only, and consequently their place is in the Rules. The part played by the Court as an appeal court is governed by the rules regulating its jurisdiction. Consequently, the suggestion mentioned above was not included.

* * *

CHAPTER V

Amendments

The American Government having proposed the acceptance of a special procedure for amendment of the Statute of the Court, this proposal has appeared suited to fill a regrettable lacuna in the Statute, a lacuna the disadvantage of which has made itself felt in the past. The Committee has changed the American proposal in order to bring it into conformity with the corresponding provision proposed at Dumbarton Oaks to form part of the Charter of The United Nations. The Committee's proposal is dependent on what is decided at San Francisco regarding the changing of the Charter itself. While deeming its proposal provisionally for this reason, the Committee has believed that it should draft it, because of the importance which it attaches to a provision of this nature.

Article 69

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of The United Nations having permanent membership on the Security Council and by a majority of the other parties to the Statute.

/The above text of Article 69 was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed./

* * *

A Member of the Committee has called the attention of the latter to the importance which exact execution of the decisions of the Court has for the reign of law and the maintenance of peace, and he wondered whether the Statute ought not to contain a provision concerning the proper means for assuring this effect. The importance of this suggestion was not contested, but the remark was made that it was not the business of the Court itself to ensure the execution of its decisions, that the matter concerns rather the Security Council, and that Article 13 paragraph 4, of the Covenant had referred in this connection to the Council of the League of Nations. A provision of this nature is not consequently to appear in the Statute, but the attention of the San Francisco Conference is to be called to the great importance connected with formulating rules on this point in the Charter of The United Nations.

However, the Committee cannot disregard the fact that among The United Nations there are many which are parties to the Statute of the Court drawn up in 1920 and revised in 1929, and that on that account they are bound not only to one another, but also with respect to States which do not appear among The United Nations. Hence the obligation for them of adjusting the situation arising between them and those States for that reason. That adjustment was not within the province of the Committee: it did not undertake to prejudge it. In drafting the above texts, the Committee has been careful to respect the distribution of subject matter and the numbering of articles just as they occur in the Statute of the Permanent Court of International Justice. It has felt that in so doing it would facilitate scientific work and the utilization of jurisprudence. However, it should be borne in mind that in order to build up an institution of international justice, the regular channels must be followed with special strictness.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 62 (revised)
G/50
April 20, 1945

RAPPORT

PROJET DE

STATUT D'UNE COUR INTERNATIONALE DE JUSTICE

VISEE AU CHAPITRE VII DES PROPOSITIONS DE DUMBARTON OAKS

PROPOSE PAR LE
COMITE DE JURISTES DES NATIONS UNIES
A LA
CONFERENCE DES NATIONS UNIES
POUR L'ORGANISATION INTERNATIONALE
A SAN FRANCISCO

(Washington, D. C., le 20 Avril 1945)

Le projet de Dumbarton Oaks ayant prévu que l'Organisation internationale des Nations Unies devrait comporter, parmi ses organes principaux, une Cour internationale de Justice, une Commission de juristes désignés par les Nations Unies s'est réunie à Washington à l'effet de préparer et de soumettre à la Conférence de San Francisco un projet de Statut de cette Cour. Le présent rapport a pour objet de présenter le résultat des travaux de cette Commission. Il ne saurait préjuger en quoi que ce soit les décisions de la Conférence: les juristes qui l'ont élaboré ont, en le faisant, agi en tant que juristes sans engager les Gouvernements dont ils relèvent.

Le projet de Dumbarton Oaks a prevu que la Cour serait l'organe judiciaire principal des Nations Unies, que son Statut, annexé à la Charte de cellesci, en serait partie intégrante et que tous les membres de l'Organisation internationale devraient être ipso facto parties au Statut de la Cour. Il n'a point déterminé si ladite Cour serait la Cour permanente de Justice Internationale dont le statut serait maintenu avec des amendements ou si ce serait une Cour nouvelle dont le Statut serait d'ailleurs élaboré sur la base du Statut de la Cour existante. Dans la préparation de son projet, la Commission a adopté la première méthode et il a été rappelé devant elle que la Cour permanente de Justice internationale avait fonctionné pendant vingt ans à la satisfaction des plaideurs et que, si la violence aviat suspendu son activité, du moins cette institution n'avait pas failli à sa tâche.

Cependant la Commission a estimé qu'il appartenait à la Conférence de San Francisco ; I) de déterminer en quelle forme sera énoncée la mission de la Cour d'être l'organe judiciaire principal des Nations Unies, 2) d'apprécier s'il y a lieu de rappeler, à ce propos, l'existence actuelle ou éventuelle d'autres tribunaux internationaux, 3) de considérer la Cour comme une Cour nouvelle ou comme le maintien de la Cour instituée en 1920 et dont le Statut, révisé une première fois en 1929, se trouvera révisé à nouveau en 1945. Ces questions ne sont pas de pure forme; la dernière, en particulier, affecte l'effet de nombreux traités contenant référence à la juridiction de la Cour permanente de Justice internationale.

Pour ces motifs le projet de Statut n'énonce aucune rédaction pour ce que doit être l'article Ier de celui-ci.

PROJET DE STATUT.

Article 1.

[Pour les raisons indiquées dans le rapport ci-joint, le texte de cet article a été laissé en blanc, en attendant la décision de la Conférence des Nations Unies à San Francisco.]

* * *

La Commission a procédé à une revision, article par article, du Statut de la Cour permanente de Justice internationale. Cette revision a consisté, d'une part, à effectuer certaines adaptations de forme rendues nécessaires par la substitution des Nations Unies à la Société des Nations, d'autre part, à introduire certaines modifications jugées désirables et actuellement possibles. Sur ce second point, d'ailleurs, la Commission a estimé que mieux valait ajourner certains amendements que compromettre par trop de hâte le succès de l'entreprise actuelle d'Organisation internationale, cela en considération même de la fonction éminente revenant à la Cour dans une organisation du monde que les Nations Unies entendent construire de telle façon que la paix pour tous et les droits de chacun soient effectivement assurés. Il est arrivé maintes fois que cet examen ait conduit la Commission à proposer le maintien de tels et tels articles du Statut sans modification. Cependant la Commission a estimé utile de numéroter les paragraphes de chaque article, modifié ou non, du Statut.

CHAPITRE I

ORGANISATION DE LA COUR.

La Commission a introduit une seule modification à l'article 2. Malgré le respect qui s'attache au nom de la Cour permanente de Justice internationale, elle a supprimé ce nom de cet article afin de ne préjuger en rien la décision qui sera prise au sujet de l'article 1er : cette suppression peut n'être que provisoire.

Article 2.

La Cour est un corps de magistrats indépendants, élus, sans égard à leur nationalité, parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international.

* * *

Bien que la proposition ait été faite de réduire le nombre des membres de la Cour soit en maintenant la structure générale de celle-ci, soit en la modifiant, la Commission a estimé préférable de maintenir et cette structure et le nombre de juges porté à quinze en 1929. Il a été indiqué que, par là, l'intérêt porté à la Cour dans les différents pays serait accru et que la création de Chambres au sein de la Cour serait facilitée. Un membre de la Commission a suggéré que cela permettrait la représentation de différents types de civilisation. D'autre part, la Commission a estimé qu'il convenait de fixer directement dans cet article la règle découlant indirectement d'une autre disposition et qui ne permet pas à un Etat ou Membre des Nations Unies de compter plus d'un de ses ressortissants parmi les membres de la Cour.

Article 3.

La Cour se compose de quinze membres. Elle ne pourra comprendre plus d'un ressortissant du même Etat ou Membre des Nations Unies.

Pour l'élection des juges, il est prévu, conformément à ce qui paraît être l'esprit du projet de Dumbarton Oaks, d'y faire procéder par l'Assemblée Générale des Nations Unies et le Conseil de Sécurité, en laissant à ceux-ci le soin de régler comment un Etat qui, tout en ayant accepté le Statut de la Cour, ne serait pas Membre des Nations Unies pourra participer à l'élection. Le mode de présentation des candidatures en vue de cette élection a donné lieu à un ample débat, certaines Délégations ayant préconisé la présentation des candidatures par les Gouvernements au lieu de confier cette désignation aux Groupes Nationaux de la Cour permanente d'Arbitrage ainsi que l'a établi le Statut actuel : le maintien du régime actuel a été défendu comme introduisant une influence non politique à ce moment de la procédure tendant au choix des juges. Dans le débat, la Commission s'est, au moment du vote, divisée sans qu'une majorité se fût dégagée. Après coup une suggestion transactionnelle a été présentée par le délégué de la Turquie: elle aurait consisté à donner au Gouvernement la faculté de ne pas transmettre les présentations de candidats arrêtées par le groupe national, ce désaccord privant le pays considéré de l'exercice, pour l'élection en cause, du droit de présenter des candidats.

La Commission a jugé à propos de présenter sur ce point deux rédactions. L'une, maintenant la présentation par les groupes nationaux de la Cour permanente d'Arbitrage, conserve, avec de simples retouches de forme, les articles 4, 5 et 6 du Statut; l'autre les modifie afin de régler la présentation des candidatures par les gouvernements.

Article 4.	Article 4.
(1) Les Membres de la Cour sont élus par l'Assemblée Générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées par les Groupes Nationaux de la Cour permanente d'arbitrage; conformément aux dispositions suivantes.	(1) Les Membres de la Cour sont élus par l'Assemblée générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées conformément aux articles 5 et 6.
(2) En ce qui concerne les Membres des Nations Unies qui ne sont pas représentés à la Cour permanente d'arbitrage les listes de candidats seront présentées par des Groupes Nationaux, désignés à cet effet par leurs Gouvernements, dans les mêmes conditions que celles stipulées pour les Membres de la Cour d'arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.	(2) En l'absence d'accord spécial, l'Assemblée générale, sur la proposition du Conseil de Sécurité, réglera les conditions auxquelles peut participer à l'élection des Membres de la Cour un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre des Nations Unies.
(3) En l'absence d'un accord spécial, l'Assemblée Générale sur la proposition du Conseil de Sécurité, règlera les conditions auxquelles peut participer à l'élection des Membres de la Cour, un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre des Nations Unies.	
Article 5.	Article 5.
(1) Trois mois au moins avant la date de l'élection, le Secrétaire Général des Nations Unies invite par écrit Membres de la Cour Permanente	Trois mois au moins avant la date de l'élection, le Secrétaire général des Nations Unies invite par écrite les Gouvernements des Nations Unies et des

d'arbitrage ainsi que les Membres des Groupes Nationaux désignés conformément au paragraphe 2 de l'article 4, à procéder dans un délai déterminé par les Groupes Nationaux à la présentation de personnes en situation de remplir les fonctions de Membre de la Cour.

(2) Chaque groupe ne peut en aucun cas présenter plus de quatre personnes dont deux au plus de sa nationalité. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

Etats parties au présent Statut à procéder, dans un délai déterminé, à la présentation d'une personne de sa nationalité en situation de remplir les fonctions de membre de la Cour.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque groupe national de consulter la plus haute cour de justice, les facultés et écloes de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque gouvernement de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

* * *

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Les articles suivants concernant la procédure de l'élection n'ont subi que les modifications de forme rendues indispensables par la référence aux organes des Nations Unies ou, dans le texte anglais des articles 7, 9, et 12, pour assurer une plus exacte concordance avec le texte français.

Article 7.

Le Secrétaire général des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées; seules ces personnes sont éligibles, sauf le cas prévu à l'article 12, paragraphe 2.

Le Secrétaire général communique cette liste à l'Assemblée Générale et au Conseil de sécurité.

Article 8.

L'Assemblée Générale et le Conseil de Sécurité procèdent indépendamment l'un de l'autre à l'élection des Membres de la Cour.

Article 9.

Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent dans l'ensemble la représentation des grandes formes de civilisation et des principaux systémes juridiques du monde.

Article 10.

(1) Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée Générale et dans le Conseil de sécurité.

(2) Au cas où le double scrutin de l'Assemblée Générale et du Conseil de Sécurité se porteraite sur plus d'un ressortissant du même Etat ou Membre des Nations Unies, le plus âge est seul élu.

Article 11.

Si, aprés la premiére séance d'élection, il reste encore des siéges à pourvoir, il est procédé, de la même manière, à une seconde et, s'il est nécessaire, à une troisiéme.

Article 12.

(1) Si aprés la troisiéme séance d'élection, il reste encore des siéges à pourvoir, il peut être à tout moment formé sur la demande soit de l'Assemblée Générale soit du Conseil de sécurité, une Commission médiatrice de six Membres, nommés trois par l'Assemblée Générale, trois par le Conseil de sécurité, en vue de choisir pour chaque siége non pourvu un nom à présenter à l'adoption séparée de L'Assemblée Générale et du Conseil de sécurité.

(2) Peuvent être portéss sur cette liste à l'unanimité toutes personnes satisfaisant aux conditions requises, alors même qu'elles n'auraient pas figuré sur la liste de présentation visée à l'article 7.

(3) Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les Membres de la Cour déjà nommés pourvoient aux siéges vacants, dans un délai à fixer par le Conseil de sécurité, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée Générale, soit dans le Conseil de sécurité.

(4) Si parmi les Juges il y a partage égal des voix, la voix du Juge le plus âgé l'emporte.

* * *

La Commission a estimé que la régle soumettant tous les neuf ans la Cour à un renouvellement intégral présentait, malgré la régle de rééligibilité des juges et la pratique, largement suivie en 1930 de la réelection, de sérieux inconvénients. Elle propose donc d'y substituer un systéme de renouvellement par tiers tous les trois ans. Cependant certains doutes paraissent subsister sur les modalités du systême et celle-ci pourraient faire l'objet d'un examen nouveau en vue de rechercher si une solution ne pourrait pas être trouveé dans une voie différente qui consisterait, contrairement à ce que dit l'article 15, à fixer à neuf ans la durée des pouvoirs de tout juge en quelque circonstance qu'il soit élu.

Article 13.

(1) Les membres de la Cour sont élus pour neuf ans ils sont rééligibles; toutefois, en ce qui concerne les juges nommés à la premiére élection de la Cour, les fonctions de cinq juges prendront fin au bout de trois ans, et celles de cinq autres juges prendront fin au bout de six ans.

(2) Les juges dont les fonctions prendront fin au terme des périodes initiales de trois et six ans mentionnées, ci-dens seront désignés par tirage au sort effectué par le Secrétaire Général des Nations Unies, immédiatement aprés qu'il aura été procédé à la premiére élection.

(3) Les Membres de la Cour restent en fonction jusqu'à leur remplacement. Aprés ce remplacement, ils continuent de connaître des affaires dont ils sont déja saisis.

(4) En cas de démission d'un membre de la Cour, la demission sera adressée au Président de la Cour, pour être transmise au Secrétaire Général des Nations Unies. Cette dernière notification emporte vacance du siége.

* * *

A la fin de l'article 14 concernant la maniére dont il sera pourvu à un siége devenu vacant, ont été supprimés les mots "dans sa premiére session", suppression motivée par le fait que le Conseil de sécurité est prévu comme devant être en session permanente.

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après : dans le mois qui suivra la vacance, le Secrétaire Général des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de sécurité.

* * *

L'examen de l'article 15 a fourni l'occasion à plusieurs Délégations de proposer une limite d'âge pour les juges. Cette proposition n'a cependant pas été retenue par la Commission qui propose de maintenir sans les modifier les articles 15 et 16: la substitution dans le texte anglais de l'expression "shall be" au mot "is" n'entraine aucun changement du texte français.

Article 15.

Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Article 16.

(1) Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2) En cas de doute, la Cour décide.

* * *

La Commission a estimé que, dans le texte anglais de l'article 17, par. 2, il y a lieu de supprimer les mots "an active" afin d'établir une conformité plus exacte avec le texte français; celui-ci n'a pas à être modifié. Il en est de même de la substitution de l'expression "shall be" au mot "is" dans le texte anglais de ce même article paragraphe 3. Aucune modification n'est, d'autre part, apportée à l'art. 18, sinon au paragraphe 2, celle qui découle de la mention du Secrétaire général des Nations Unies.

Article 17.

(1) Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2) Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3) En cas de doute, la Cour décide.

Article 18.

(1) Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2) Le Secrétaire général des Nations Unies en est officiellement informé par le Greffier.

(3) Cette communication emporte vacance de siége.

* * *

La Commission ne propose aucune modification à l'article 19 concernant l'octroi aux Membres de la Cour des priviléges et immunités diplomatiques. Toutefois elle signale que, dans la mesure où la Charte des Nations Unies aura réglé l'octroi de semblables priviléges et immunités aux représentants des Nations Unies et à leurs agents, il y aura lieu d'examiner l'opportunité et la maniére de coordonner les dispositions de cet ordre.

Quant à l'article 20, il n'a paru appeler aucune modification.

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

/Sous réserve d'examen après que des despositions à ce sujet auront été adoptées pour inclusion dans la Charte./

Article 20.

Tout membre de la Cour doit, avant d'entrer en fonction, en séance publique, prendre engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

* * *

Le paragraphe 2 de l'article 21 a donné lieu à discussion par suite de la suggestion qui a été faite d'autoriser la Cour à nommer, si elle le juge à propos, un Secrétaire général à côté du Greffier. Certains ont paru redouter ce dualisme tandis que d'autres préféraient reconnaître à la Cour le pouvoir de nommer tels fonctionnaires dont elle estimerait avoir besoin; toutefois, on n'a pas voulu imposer que tous les fonctionnaires dépendant d'elle fussent nommés par elle. Ces considérations diverses ont conduit à compléter ce paragraphe par une formule souple qui autorisera la Cour soit à nommer soit à charger tel autre d'effectuer la nomination.

Quant au paragraphe 3 qui prenait soin d'affirmer la compatibilité entre les fonctions de Greffier de la Cour et celles de Secrétaire général de la Cour permanente d'Arbitrage, il a paru superflu et il a été supprimé.

Article 21.

(1) La Cour élit, pour trois ans, son Président et son Vice-Président; ils sont rééligibles.

(2) Elle nomme son Greffier et peut pourvoir à la nomination de tels autres fonctionnaires qui seraient nécessaires.

* * *

Le siège de la Cour étant maintenu à La Haye, il a paru convenable d'ajouter que la Cour, lorsqu'elle le jugerait désirable, pourrait décider de siéger en un autre lieu et d'y exercer, par suite, ses fonctions: L'article 22 a été complété à cet effet.

Article 22.

(1) Le siège de la Cour est fixé à La Haye. Ceci, toutefois, n'empêchera pas la Cour de siéger et d'exercer ses fonctions ailleurs lorsqu'elle le jugera désirable.

(2) Le Président et le Greffier résident au siège de la Cour.

* * *

Aprés avoir examiné avec soin l'article 23 concernant les congés qui peuvent être accordés aux membres de la Cour dont les foyers sont très éloignés de La Haye, la Commission a retenu la rédaction de l'ancien article mais avec un paragraphe 2 conçu en termes généraux.

Elle ne propose pas de modifier les articles 24 et 25.

Article 23.

(1) La Cour reste toujours en fonctions, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

(2) Les membres de la Cour ont droit à des congés périodiques dont la date et la durée seront fixées par la Cour, en tenant compte de la distance qui sépare La Haye de leurs foyers.

(3) Les membres de la Cour seront tenus, à moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1) Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2) Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

(3) Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25:

(1) Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

(2) Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3) Toutefois le quorum de neuf est suffisant pour constituer la Cour.

* * *

Le Statut de la Cour permanente de Justice internationale a prescrit dans ses articles 26 et 27 l'institution, par la Cour, de Chambres spéciales pour les affaires concernant le travail et pour les affaires concernant le transit et les communications.

En fait ces Chambres ont bien été instituées, mais elles n'ont jamais fonctionné et il parait dès lors superflu de maintenir les dispositions qui les concernent. Mais il a paru utile d'autoriser la Cour à constituer, s'il y a lieu, d'une part, des Chambres chargées de connaître de certaines catégories d'affaires et l'on a repris, à cet égard, l'exemple des affaires en matière de travail, de transit et de communications, et d'autre part, de constituer lorsque les parties le demanderont une Chambre spéciale pour connaître d'une affaire déterminée. La Commission a pensé que cette innovation pouvait faciliter, en certaines circonstances, le recours à cette juridiction.

Article 26.

(1) La Cour peut, à toute époque constituer une ou plusieurs Chambres composées de 3 juges au moins selon ce qu'elle décidera, pour connaître de catégories déterminées d'affaires, par exemple d'affaires de travail et d'affaires concernant le transit et les communications.

(2) La Cour peut, à toute époque constituer une Chambre pour connaître d'une affaire déterminée. Le nombre des juges de cette chambre sera fixé par la Cour avec l'assentiment des parties.

(3) Les chambres prévues au présent article statueront, si les parties le demandent.

* * *

Ces Chambres, ainsi que celle qui fera l'objet de l'article 29, rendront des décisions qui seront des décisions de la Cour comme l'avait dit déjà l'article 73 du Règlement de la Cour. Elles pourront comme l'avait prévu l'ancien article 28 du Statut et comme cela deviendra la règle pour la Cour elle-même, en vertu du nouvel article, siéger ailleurs qu'à La Haye.

Article 27.

Tout arrêt rendu par l'une des chambres prévues aux articles 26 et 29 sera un arrêt de la Cour

Article 28.

Les chambres prévues aux articles 26 et 29 peuvent, avec le consentement des parties, siéger et exercer leurs fonctions ailleurs qu'à La Haye.

* * *

Quant à la Chambre de procédure sommaire instituée par l'article 29, elle est maintenue avec de simples rectifications de forme de cet article. Logiquement, celui-ci devrait prendre place un peu plus haut: il est laissé à cette place pour ne pas modifier le numérotage établi.

Article 29.

En vue de la prompte expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelée à statuer en procédure sommaire lorsque les parties le demandent. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l' impossibilité de siéger.

* * *

L'article 30 subit dans son paragraphe Ier des modifications qui n'altérent pas le sens que lui avait reconnu la Cour. Il y est ajouté une disposition autorisant la Cour à instituer soit pour elle-même soit dans ses Chambres des assesseurs n'ayant pas le droit de vote. L'institution des assesseurs était antérieurement prévue pour les Chambres· on a jugé utile d'en proposer l'extension à la Cour elle-même.

Article 30.

(1) La Cour détermine par un règlement le mode suivant lequel elle exerce ses attributions. Elle règle notamment sa procédure.

(2) Le réglement de la Cour peut prévoir des assesseurs siégeant à la Cour ou dans ses chambres, sans droit de vote.

* * *

La Commission a examiné s'il n'y avait pas lieu de simplifier, en la réduisant, la rédaction des paragraphes 2 et 3 de l'article 31 concernant la faculté pour une partie de nommer un juge national. Finalement elle n'a pas retenu cette suggestion et n'a apporté à cet article que de faibles modifications: l'une, au paragraphe 2, consiste à dire, dans le texte français: "toute autre partie" au lieu de "l'autre partie" et dans le texte anglais "any other party" au lieu de "the other party"; les autres, affectant seulement le texte anglais substituent dans les paragraphes 3, 5 et 6, aux termes antérieurement employés des termes meilleurs et correspondant mieux à la terminologie déjà adoptée dans le texte français.

Article 31.

(1) Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

(2) Si la Cour compte sur le siège un juge de la nationalité d'une des parties, toute autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

(3) Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent.

(4) Le présent article s'applique dans le cas des articles 26 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

(5) Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En case de doute, la Cour décide.

(6) Les juges désignés, comme il est dit aux paragraphes 2, 3 et 4 du présent article, doivent satisfaire aux prescriptions des articles 2, 17, paragraph 2, 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

* * *

Sauf la substitution, dans le paragraphe 5 de l'article 32, de l'Assemblée générale des Nations Unies à l'Assemblée de la Société des Nations, cet article et l'article 33 concernant l'un et l'autre le régime financier de la Cour ne sont pas modifiés.

Article 32.

(1) Les membres de la Cour reçoivent un traitement annuel.

(2) Le Président reçoit une allocation annuelle spéciale.

(3) Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4) Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5) Ces traitements, allocations et indemnitès sont fixés par l'Assemblée générale des Nations Unies. Ils ne peuvent être diminués pendant la durée des fonctions.

(6) Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

(7) Un réglement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Gréffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier recoivent le remboursement de leurs frais de voyage.

(8) Les traitements, indemnités et allocations sont exempts de tout impôt.

Article 33.

Les frais de la Cour sont supportés par les Nations Unies de la manière que l'Assemblée générale décide.

CHAPITRE II

Compétence de la Cour

L'article 34 énonçant la règle que seuls les Etats ou les Membres des Nations Unies sont justiciables de la Cour, la Commission a jugé utile d'ajouter un second alinéa déterminant dans quelles conditions des renseignements relatifs aux affaires portées devant la Cour pourront être demandés par celle-ci à des organisations internationales publiques ou être présentés spontanément par ces organisations. Ce faisan la Commission n'a pas voulu aller jusqu'à admettre, comme certaines délégations y paraissaient disposées, que des organisations internationales publiques pussent devenir parties en cause devant la Cour. Admettant seulement que ces organisations pourraient, dans la mesure indiquée, fournir des renseignements, elle a posé une règle que certains ont considérée comme étant de procédure plutôt que de compétence. La Commission, en la plaçant néanmoins à l'article 34, a entendu en marquer l'importance.

Article 34.

(1) Seuls les Etats ou les Membres de Nations Unies ont qualité pour se présenter devant la Cour.

(2) La Cour, dans les conditions prescrites par son Réglement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle, et recevra également les dits renseignements qui lui seraient présentés par ces organisations sur leur propre initiative.

* * *

En dehors des modifications de pure forme nécessitées par la référence à l'organisation des Nations Unies et non plus au Pacte de la Société des Nations, l'article 35 est rectifié seulement en ce que, dans le texte anglais du paragraphe 3, le mot "case" est substitué au mot "dispute" ce qui assurera une meilleure concordance avec le texte français.

Article 35.

(1) La Cour est ouverte aux Membres des Nations Unies ainsi qu'aux Etats parties au présent Statut.

(2) Les conditions auxquelles elle est ouverte aux

autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3) Lorsqu'un Etat, qui n'est pas membre des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

* * *

La question de la juridiction obligatoire a éte débattue dès la préparation initiale du Statut de la Cour. Admise par le Comité consultatif de Juristes, en 1920, la juridiction obligatoire a été écartée au cours de l'examen du projet de Statut par la Société des Nations pour faire place, sur l'initiative fructueuse d'un jurisconsulte brésilien, à une clause facultative permettant aux Etats d'accepter par avance la juridiction obligatoire de la Cour dans un domaine délimité par l'article 36. Ce débat a éte repris et de très nombreuses délégations ont fait connaître leur désir de voir consacrer la juridiction obligatoire de la Cour par une clause insérée dans le Statut révisé en sorte que, celui-ci devant devenir partie intégrante de la Charte des Nations Unies, la juridiction obligatoire de la Cour serait un élément de l'organisation internationale qu'on se propose d'instituer à la Conférence de San Francisco. A s'en tenir aux préférences ainsi marquées, il ne parait pas douteux que la majorité de la Commission était en faveur de la juridiction obligatoire. Mais il a éte relevé que, malgré ce sentiment prédominant, il ne paraissait pas certain, ni même probable que toutes les Nations dont la participation à l'organisation internationale projetée apparait comme nécessaire, fussent dès maintenant en situation d'accepter la règle de la juridiction obligatoire et que le projet de Dumbarton Oaks ne paraissait pas la consacrer; certains, tout en conservant leurs préférences à cet égard, ont estimé que la prudence conseillait de ne pas dépasser le procédé de la clause facultative insérée dans l'article 36 et qui a ouvert la voie à l'adoption progressive, en moins de dix ans, de la juridiction obligatoire par de nombreux Etats qui, en 1920, se refusaient à y souscrire. Placé sur ce terrain, le problème s'est trouvé revêtir un caractère politique et la Commission a estimé qu'elle devait le déférer à la conférence de San Francisco.

La suggestion a été faite par la Délégation égyptienne de chercher une solution transactionnelle dans un système qui, posant la règle de la juridiction obligatoire, permettrait à chaque Etat de l'écarter par une réserve. Plutôt que d'entrer dans cette voie, la Commission a préféré faciliter l'examen de la question en présentant deux textes pour mémoires plutôt qu'à tetre de propositions.

L'un est présenté pour le cas où la Conférence n'entendrait pas consacrer dans le Statut la compétence obligatoire de la Cour mais seulement ouvrir la voie à celle-ci en offrant aux Etats d'accepter, s'ils le jugent à propos, une clause facultative à ce sujet. Ce texte reproduit l'article 36 du Statut avec une addition pour le cas où la Charte des Nations Unies viendrait à faire quelque place à la juridiction obligatoire.

Le second texte, s'inspirant aussi de l'article 36 du Statut, établit directement la juridiction obligatoire sans er par la voie d'une option que chaque Etat serait libre aire ou de ne pas faire. Aussi est-il plus simple que précédent. On a même relevé qu'il serait trop simple. Commission a cependant pensé que le moment n'était pas encore venu de l'élaborer davantage et de rechercher si la juridiction obligatoire ainsi établie devrait s'accompagner de quelques réserves, telles que celle des différends appartenant au passé, celle des contestations nées au cours de la présente guerre, ou celles autorisées par l'Acte général d'arbitrage de 1928. Si le principe qu'énonce ce second texte était admis, celui-ci pourrait servir de base pour élaborer telles dispositions mettant en application le principe qu'il énonce avec les aménagements qui pourraient être jugés opportuns.

Certaines délégations avaient le dèsir de voir insérer dans l'article 36, paragraphe 1, la précision que la compétence de la Cour s'étend aux affaires "justiciables", ou "d'ordre juridique", ou "of legal nature", que les parties lui soumettront. Des objections ont été faites à l'insertion d'un telle précision dans une disposition visant le cas où l'accord des parties, saisit la Cour. Certains se sont refusés à restreindre ainsi la compétence de la Cour. Des craintes se sont aussi élevées au sujet des difficultés d'interprétation que ferait naître une telle disposition alors que la pratique n'a pas révélé de sérieuses difficultés pour l'application de l'article 36, paragraphe 1. Aussi n'a-t'il pas été modifié dans le sens indiqué.

Article 36.

/La Commission soumet ci-dessous deux textes pour le présent Article, l'opinion des membres de la Commission étant divisée quant au choix de l'un ou de l'autre.7

/(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations ou dans les traités et conventions en vigueur.	/(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies ou dans les traités et conventions en vigueur.
(2) Les membres des Nations Unies et Etats parties au présent Statut pourront, à n'importe quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou Etat acceptant la même obligation, la juridiction de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:	(2) Les Membres des Nations Unies et Etats parties au présent Statut reconnaissent entre eux comme obligatoire de plein droit et sans convention spéciale, la juridiction de la Cour sur tout différend d'ordre juridique ayant pour objet:
(a) l'interprétation d'un traité;	(a) l'inperprétation d'un traité;

(b) tout point de droit international;

(c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international;

(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

(3) La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la parte de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

(4) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

(b) tout point de droit international;

(c) la réalité de tout fait qui, s'il était étable constituerait la violation d'un engagement international;

(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

(3) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.]

Pour adapter à la situation nouvelle les dispositions de l'article 37, il sera nécessaire de dire que lorsqu'un traité ou une convention en vigueur vise le renvoi à une juridiction à établir par les Nations Unies, la Cour sera cette juridiction. Mais cela ne suffira pas: il faudra ajouter que c'est également cette Cour qui continue à constituer ou qui constituera la juridiction visée par tout traité donnant compétence à la Cour permanente de Justice internationale.

La forme à donner à cette seconde règle dépend du parti qui sera pris sur le point de savoir si la Cour régie par le Statut en voie d'élaboration sera considérée comme une Cour nouvelle ou la Cour instituée en 1920 et régie par un Statut qui datant d'alors, aura été revisé en 1945 comme il l'a été en 1929. Afin de ne pas préjuger la réponse que la Conférence de San Francisco aura à donner à propos de l'article I^er^ et pour marquer qu'en sa rédaction de 1920, l'article 37 serait insuffisant, la Commission a ici inscrit, pour mémoire, ledit article tel qu'il a été proposé dans le projet américain.

Il y a lieu de remarquer, d'ailleurs, que si la Cour qui sera régie par le présent Statut est considérée comme continuant à être la Cour instituée en 1920, la force de droit des nombreux actes internationaux généraux ou spéciaux, consacrant la juridiction obligatoire de cette Cour, subsistera. Que si, au contraire, la Cour est tenue pour une Cour nouvelle, l'ancienne disparaissant, lesdits engagements risqueront d'être considérés comme caducs, leur remise en vigueur sera malaisée, un progrès du droit se trouvera ainsi abandonné ou gravement compromis.

Article 37.

Lorsqu'un traité ou une convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou les Nations Unies, la Cour constituera cette juridiction.

[Sous réserve d'examen après adoption du texte de l'article 1.]

* * *

L'article 38 qui détermine, selon ses termes, ce que la Cour "applique" a suscité plus de controverses dans la doctrine que de difficultés dans la pratique. La Commission a estimé qu'il ne serait pas opportun d'entreprendre la revision de cet article. Pour sa mise en oeuvre, elle a fait confiance à la Cour et elle l'a laissé sans autre changement que celui qui apparait dans le numérotage des dispositions de cet article.

Article 38.

(1) - La Cour applique:

(a) les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige;

(b) la coutume internationale comme preuve d'une pratique générale accepté comme étant le droit;

(c) les principes généraux de droit reconnus par les nations civilisées;

(d) sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

(2) La présente disposition ne porte pas atteinte à la faculté pour la Cour, si les parties sont d'accord, de statuer ex aequo et bono.

CHAPITRE III

Procedure

Les dispositions du Statut concernant les langues officielles de la Cour ne sont modifiées que pour préciser, conformément à la pratique, que la Cour, à la pratique, que la Cour, à la demande d'une partie, autorisera celle-ci à se servir d'une autre langue.

Article 39.

(I) Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

(2) A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

(3) La Cour, à la demande de toute partie, autorisera l'emploi, par cette partie, d'une langue autre que le français ou l'anglais.

Dans les autres dispositions du Statut relatives à la procédure, la Commission n'a pas cru devoir proposer d'innovations importantes. Ces dispositions directement inspirées de celles des Conventions de La Haye ont donné satisfaction dans la pratique. En matière de mesures conservatoires, elle a estimé que l'indication de ces mesures devrait être notifiée au Conseil de Sécurité comme elles devaient l'être auparavant au Conseil de la Société des Nations (article 41).

Elle a jugé à propos, d'autre part, d'améliorer la concordance entre les deux textes du Statut en modifiant quelques expressions dans le texte anglais des articles 43, paragraphe 2, 47, paragraphe 2, et 55, paragraphe 1 et 2, sans q'il y ait eu à modifier le texte français. Les articles 40 à 56 se présentent, en conséquance, comme suit:

Article 40.

(1) Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une

requête, adressées au Greffier; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

(2) Le Greffier donne immédiatement communication de la requête à tous intéressés.

(3) Il en informe également les Membres des Nations Unies par l'entremise du Secrétaire Général, ainsi que les États admis à ester en justice devant la Cour.

Article 41.

(1) La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

(2) En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42.

(1) Les parties sont représentées par des agents.

(2) Elles peuvent se faire assister devant la Cour par des conseils ou des avocats.

Article 43.

(1) La procédure a deux phases: l'une écrite, l'autre orale.

(2) La procédure écrite comprend la communication à juge et à partie des mémoires, des contre-mémoires, et, éventuellement, des répliques, ainsi que de toute pièce et document à l'appui.

(3) La communication se fait par l'entremise du Greffe dans l'ordre et les délais déterminés par la cour.

(4) Toute pièce produite par l'une des parties doit être communiquée à l'autre en copie certifiée conforme.

(5) La procédure orale consiste dans l'audition par la Cour des témoins, experts agents, conseils et avocats.

Article 44.

(1) Pour toute notification à faire à d'autres personnes que les agents, conseils et avocats, la Cour s'adresse

directement au gouvernement d l'Etat sur le territoire duquel la notification doit produire effet.

(2) Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuves.

Articl -

Les débats sont dirigés par le Président et à défaut de celui-ci par le Vice-Président; en cas d'empêchement, par le plus ancien des juges présents.

Article 46.

L'audience est publique, à moins qu'il n'en soit autrement décidé par la Cour ou que les deux parties ne demandent que le public ne soit pas admis.

....

Article 47.

(1) Il est tenu de chaque audience un procès-verbal signé par le Greffier et le Président.

(2) Ce procès-verbal a seul caractère authentique.

Article 48.

La Cour rend des ordonnances pour la direction du procès, la détermination des formes et délais dans lesquels chaque partie doit finalement conclure; elle prend toutes les mesures que comporte l'administration des preuves.

Article 49.

La Cour peut, même avant tout debat, demander aux agents de produire tout document et de fournir toutes explications. En cas de refus, elle en prend acte.

Article 50.

A tout moment la Cour peut confier une enquête ou une expertise à toute personne, corps, bureau, commission ou organe de son choix.

Article 51.

Au cours des débats, toutes questions utiles sont posées aux témoins et experts dans les conditions que fixera la Cour dans le réglement visé à l'article 30.

Article 52.

Après avoir re u les preuves et témoignages dans les délais déterminés par elle, la Cour peut écarter toutes dépositions ou documents nouveaux qu'une des parties voudrait lui présenter sans l'assentiment de l'autre.

Article 53.

(1) Lorsqu'une des parties ne se présente pas, ou s'abstient de faire valoir ses moyens, l'autre partie peut demander à la Cour de lui adjuger ses conclusions.

(2) La Cour, avant d'y faire droit, doit s'assurer non seulement qu'elle a compétence aux termes des articles 36 et 37, mais que les conclusions sont fondées en fait et en droit.

Article 54.

(1) Quand les agents, avocats et conseils ont fait valoir, sous le contrôle de la Cour, tous les moyens qu'ils jugent utiles, le Président prononce la clôture des débats.

(2) La Cour se retire en Chambre du Conseil pour délibérer.

(3) Les délibérations de la Cour sont et restent secrètes.

Article 55.

Les décisions de la Cour sont prises à la majorité des juges présents.

En cas de partage de voix, la voix du Président ou de celui qui le remplace est prépondérante.

Article 56.

L'arrêt est motivé.

Il mentionne les noms des juges qui y ont pris part.

* * *

Une innovation qui, au surplus, confirme la pratique est introduite dans l'article 57, paragraphe 1, qui consacre au profit non seulement du juge dissident mais de tout juge le droit de joindre à l'arrêt l'exposé de son opinion individuelle.

Article 57.

Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, tout juge aura le droit d'y joindre l'exposé de son opinion individuelle.

Les articles 58 à 64 ne comportent aucun changement dans le texte français;les rectifications de forme apportées au texte anglais des articles 61 (substitution de: judgment à: sentence, dans le paragraphe 5) et 62, paragraphe 1 (suppression des mots: as a third party) n'en altèrent pas le sens.

Article 58.

L'arrêt est signé par le Président et par le Greffier. Il est lu en séance publique, les agents dûment prévenus.

Article 59.

La décision de la Cour n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé.

Article 60.

L'arrêt est définitif et sans recours. En cas de contestation sur le sens et la portée de l'arrêt, il appartient à la Cour de l'interpréter à la demande de toute partie.

Article 61.

(1) La revision de l'arrêt ne peut être éventuellement demandée à la Cour qu'a raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, etait inconnu de la Cour et de la partie qui demande la revision, sans qu'il y ait, de sa part, faute à l'ignorer.

(2) La procédure de revision s'ouvre par un arrêt de la Cour constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la revision, et déclarant de ce chef la demande recevable.

(3) La Cour peut subordonner l'ouverture de la procédure en revision à l'exécution préalable de l'arrêt.

(4) La demande en revision devra être formée au plus tard dans le délai de six mois après la découverte du fait nouveau.

(5) Aucune demande de revision ne pourra être formée après l'expiration d'un délai de dix ans à dater de l'arrêt.

Article 62.

(1) Lorsqu'un Etat estime que dans un différend un intérêt d'ordre juridique est pour lui en cause, il peut adresser à la Cour une requête, à fin d'intervention.

(2) La Cour décide.

Article 63.

(1) Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffier les avertit sans délai.

(2) Chacun d'eux a le droit d'intervenir au procès, et s'il exerce cette faculté, l'interprétation contenue dans la sentence est également obligatoire à son égard.

Article 64.

S'il n'en est autrement décidé par la Cour, chaque partie supporte ses frais de procédure.

CHAPITRE IV

Avis Consultatifs

Il appartient à la Charte des Nations Unies de déterminer quels organes de celles-ci auront qualité pour saisir la Cour d'une demande d'avis consultatif. Sans que cela ait été dit dans le projet de Dumbarton Oaks, la Commission a cru pouvoir présumer, d'ailleurs, que cette faculté serait ouverte non seulement au Conseil de Sécurité mais aussi à l'Assemblée Générale et c'est sur cette base qu'elle a déterminé comment la demande serait présentée. La suggestion a été faite d'admettre les organisations internationales et même, dans une certaine mesure, les Etats à demander des avis consultatifs. La Commission n'a pas cru devoir l'adopter. En dehors de cela, les modifications apportées aux articles 65 à 68 sont de pure forme et n'appellent aucun commentaire.

Article 65.

(1) Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par (le Président de l'Assemblée Générale ou) le Président du Conseil de Sécurité, soit par le Secrétaire Général des Nations Unies agissant en vertu d'instructions (de l'Assemblée Générale ou) du Conseil de Sécurité.

(2) La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

Article 66.

(1) Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres des Nations Unies par l'entremise du Secrétaire général des Nations Unies, ainsi qu'aux Etats admis à ester en justice devant la Cour.

(2) En outre, à tout Membre des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siége pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

(3) Si un des Membres des Nations Unies ou des Etats admis à ester devant la Cour, n'ayant pas été l'objet de la communication spéciale visée au paragraphe 2 du présent Article, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statute.

(4) Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Article 67.

La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire général des Nations Unies et les représentants des Membres des Nations Unies, des Etats et des organisations internationales directement intéressés étant prévenus.

Article 68.

Dans l'exercice de ses attributions consultatives, la Cour s'inspirera en outre des dispositions du présent Statut qui s'appliquent en matière contentieuse, dans la mesure où elle les reconnaîtra applicables.

Il a été suggéré de transporter dans le Statut les dispositions du Règlement de la Cour (article 67) concernant les recours exercés devant la Cour. Mais il a été observé que ces dispositions concernent seulement la procédure et ont, par suite, leur place dans le réglement. Le rôle de la Cour comme instance d'appel est gouverné par les règles régissant sa juridiction. En conséquence, la suggestion ci-dessus rappelée n'a pas été retenue.

CHAPITRE V

Amendments

Le Gouvernement américain ayant proposé de convenir d'une procédure spéciale d'amendement du Statut de la Cour, cette proposition est apparue comme de nature à combler une lacune regrettable du Statut, lacune dont l'inconvénient s'est déja fait sentir dans le passé. La Commission a modifié la proposition américaine pour la mettre en conformité avec la disposition correspondante proposée à Dumbarton Oaks pour prendre place dans la Charte des Nations Unies. La proposition de la Commission est subordonnée à ce qui sera décidé à San Francisco pour la modification de la Charte elle-même. Tout en tenant sa proposition pour provisoire à ce titre, la Commission a cru devoir la rédiger, en raison de l'importance qu'elle attache a une disposition de cet ordre.

Article 69.

Les amendements au présent Statut entreront en vigueur pour toutes les parties au Statut quand ils auront été adoptés par une majorité des deux tiers des membres de l'assemblée générale et ratifiés, selon leur procédure constitutionnelle, par les Etats ayant un siège permanent au Conseil de sécurité et la majorité des autres parties au présent Statut.

* * *

Un membre de la Commission a attiré l'attention de celle-ci sur l'importance que présente pour le règne du droit et le maintien de la paix l'exacte exécution des arrêts de la Cour et il se demandait si le Statut ne devrait pas contenir une disposition concernant les moyens propres à assurer cet effet. L'importance de cette suggestion n'a pas été contestée, mais la remarque a été faite qu'il n'appartenait pas à la Cour d'assurer elle-même l'exécution de ses arrêts, que l'affaire concerne plutôt le Conseil de sécurité et que l'article 13, paragraphe 4, du Pacte s'était référé sur ce point au Conseil de la Société des Nations. Une disposition de cet ordre n'a donc pas à figurer dans le Statut, mais l'attention de la Conférence de San Francisco doit être attirée sur le grand intérêt qui s'attache à régler ce point dans la Charte des Nations Unies.

* * *

La Commission ne peut cependant perdre de vue que nombreuses sont, parmi les Nations Unies, celles qui sont parties au Statut de la Cour établi en 1920 et révisé en 1929 et que, par là, elles sont liées non seulement entre elles mais aussi envers ces Etats qui ne figurent pas parmi les Nations Unies. D'où l'obligation pour elles de régler la situation se présentant à ce titre entre elles et ces Etats. Ce règlement n'était pas du ressort de la Commission: elle n'a pas entendu le préjuger. La Commission en rédigeant les textes ci-dessus a pris soin de respecter la répartition des matières et le numérotage des articles tels qu'elle les a trouvés dans le Statut de la Cour permanente de Justice internationale. Elle a estimé que par lá elle faciliterait le travail scientifique et l'utilisation de la jurisprudence. Il convient cependant de rappeler que pour construire une institution de Justice internationale les voies régulières s'imposent.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
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April 20, 1945

DRAFT OF

STATUTE OF AN INTERNATIONAL COURT OF JUSTICE REFERRED TO IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS

SUBMITTED BY THE
UNITED NATIONS COMMITTEE OF JURISTS
TO THE
UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION
AT SAN FRANCISCO

(Washington, D. C., April 20, 1945)

Article 1.

[For reasons stated in the accompanying Report, the text of Article 1 has been left in blank pending decision by The United Nations Conference at San Francisco.]

CHAPTER I

Organization of the Court

Article 2.

The Court shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3.

The Court shall consist of fifteen members no two of whom may be nationals of the same State or Member of The United Nations.

Article 4.

(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordence with the following provisions.	(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated in accordance with Articles 5 and 6.
(2) In the case of Members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members	(2) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly

of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.

Article 5.

(1) At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

on the proposal of the Security Council.

At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the Governments of Members of the United Nations and of States parties to the present Statute inviting each of them to undertake, within a given time, the nomination of a person of their own nationality in a position to accept the duties of a member of the Court.

Article 6.

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.	Before making these nominations, each Government is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7.

(1) The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12 (2), these shall be the only persons eligible.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.

(1) Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.	Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

(1) If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

(3) If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

(4) In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the

judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of The United Nations immediately after the first election has been completed.

(3) The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

Article 14.

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council...

Article 15.

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16.

(1) No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

(2) Any doubt on this point shall be settled by the decision of the Court.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3) Any doubt on this point shall be settled by the decision of the Court.

Article 18.

(1) No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of The United Nations by the Registrar.

(3) This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

/Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter./

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 21.

(1) The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22.

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

(2) The President and Registrar shall reside at the seat of the Court.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

(1) If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1) The full Court shall sit except when it is expressly provided otherwise.

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

Article 26.

(1) The Court may from time to time form one or more

chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

Article 27.

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30.

(1) The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31.

(1) Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to choose a judge as provided in paragraph (2) of this Article.

(4) The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

(6) Judges chosen as laid down in paragraphs (2), (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17(2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32.

(1) Each member of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

(3) The Vice-President shall receive a special allowance for every day on which he acts as President.

(4) The judges appointed under Article 31, other than members of the Court, shall receive indemnities for each day on which they exercise their functions.

(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of The United Nations. They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

Article 33.

The expenses of the Court shall be borne by The United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

Competence of the Court

Article 34.

(1) Only States or Members of The United Nations may be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

Article 35.

(1) The Court shall be open to the Members of The United Nations and also to States parties to the present Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of The United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36.

[The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.]

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations or in treaties and conventions in force.

(2) The Members of The United Nations and the States parties to the present Statute may at any time declare that they recognize as compulsory _ipso_ _facto_ and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

(3) The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations or in treaties and conventions in force.

(2) The Members of The United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory _ipso_ _facto_ and without special agreement in any legal dispute concerning:

- (a) the interpretation of a treaty; or
- (b) any question of international law; or
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation; or
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.]

(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.]

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court shall be such tribunal.

[Subject to reconsideration after the adoption of a text of Article 1.]

Article 38.

(1) The Court shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use

the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

(3) The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties shall be indicated.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

(2) Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.

Article 43.

(1) The procedure shall consist of two parts: written and oral.

(2) The written proceedings shall consist of the communication to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3) These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

(4) A certified copy of every document produced by one party shall be communicated to the other party.

(5) The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1) For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2) The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

(1) Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2) These minutes alone shall be authentic.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

(1) Whenever one of the parties does not appear before the Court, or fails to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2) The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with

Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

(3) The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1) All questions shall be decided by a majority of the judges present.

(2) In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56.

(1) The judgment shall state the reasons on which it is based.

(2) It shall contain the names of the judges who have taken part in the decision.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

(1) An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2) The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3) The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4) The application for revision must be made at latest within six months of the discovery of the new fact.

(5) No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62.

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

(2) It shall be for the Court to decide upon this request.

Article 63.

(1) Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article. 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of The United Nations, through the Secretary-General of The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or

international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3) Should any Member of The United Nations or State entitled to appear before the Court have failed to receive the special communication referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4) Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of The United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

Amendment

Article 69.

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of The United Nations having permanent

membership on the Security Council and by a majority of the other parties to the Statute.

/The above text of Article 69 was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed./

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 76(60)
G/63
April 20, 1945

PROJET DE

STATUT DE LA COUR INTERNATIONALE DE JUSTICE

VISEE AU CHAPITRE VII DES PROPOSITIONS DE DUMBARTON OAKS

PROPOSE PAR LE
COMITE DE JURISTES DES NATIONS UNIES
A LA
CONFERENCE DES NATIONS UNIES
POUR L'ORGANISATION INTERNATIONALE
A SAN FRANCISCO

(Washington, D. C., le 20 Avril 1945)

Article 1.

/Pour les raisons indiquées dans le rapport ci-joint, le texte de cet article a été laissé en blanc, en attendant la décision de la Conférence des Nations Unies à San Francisco./

CHAPITRE I

Organisation de la Cour

Article 2.

La Cour est un corps de magistrats indépendants, élus sans égard à leur nationalité parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international.

Article 3.

La Cour se compose de quinze membres. Elle ne pourra comprendre plus d'un ressortissant du même Etat ou Membre des Nations Unies.

Article 4.

(1) Les Membres de la Cour sont élus par l'Assemblée générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées par les groupes nationaux de la Cour permanente d'Arbitrage conformément aux dispositions suivantes.	(1) Les Membres de la Cour sont élus par l'Assemblée générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées conformément aux articles 5 et 6.
(2) En ce qui concerne les Membres des Nations Unies qui ne sont pas représentés à la Cour permanente d'Arbitrage	(2) En l'absence d'accord spécial, l'Assemblée générale, sur la proposition du Conseil de Sécurité, réglera les condi-

les listes de candidats seront présentées par des groupes nationaux, désignés à cet effet par leurs gouvernements, dans les mêmes conditions que celles stipulées pour les membres de la Cour d'Arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.

(3) En l'absence d'un accord spécial, l'Assemblée générale, sur la proposition du Conseil de Sécurité, réglera les conditions auxquelles peut participer à l'élection des membres de la Cour, un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas membre des Nations Unies.

tions auxquelles peut participer à l'élection des membres de la Cour un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas membre des Nations Unies.

Article 5.

(1) Trois mois au moins avant la date de l'élection, le Secrétaire général des Nations Unies invite par écrit les membres de la Cour permanente d'Arbitrage ainsi que les membres des groupes nationaux désignés conformément au paragraphe 2 de l'article 4, à procéder dans un délai déterminé par les groupes nationaux à la présentation de personnes en situation de remplir les fonctions de membre de la Cour.

Trois mois au moins avant la date de l'élection, le Secrétaire général des Nations Unies invite par écrit les Gouvernements des Nations Unies et des Etats parties au présent Statut à procéder, dans un délai determiné, à la présentation d'une personne de sa nationalité en situation de remplir les fonctions de membre de la Cour.

(2) Chaque groupe ne peut en aucun cas présenter plus de quatre personnes dont deux au plus de sa nationalité. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque groupe national de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

Avant de procéder à cette désignation, il est recommandé à chaque gouvernement de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

Article 7.

(1) Le Secrétaire général des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées: seules ces personnes sont éligibles, sauf le cas prévu à l'article 12, paragraphe 2.

(2) Le Secrétaire général communique cette liste à l'Assemblée générale et au Conseil de Sécurité.

Article 8.

L'Assemblée générale et le Conseil de Sécurité procèdent indépendamment l'un de l'autre à l'élection des membres de la Cour.

Article 9.

Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent dans l'ensemble la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde.

Article 10.

(1) Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée générale et dans le Conseil de Sécurité.

(2) Au cas où le double scrutin de l'Assemblée générale et du Conseil de Sécurité se porterait sur plus d'un ressortissant du même Etat ou Membre des Nations Unies. le plus âgé est seul élu.

Article 11.

Si, après la première séance d'élection il reste encore des sièges à pourvoir il est procédé, de la même maniére, à une seconde et, s'il est nécessaire, à une troisième.

Article 12.

(1) Si, après la troisième séance d'élection, il reste encore des sièges à pourvoir, il peut être à tout moment formé sur la demande, soit de l'Assemblée générale, soit du Conseil de Sécurité. une Commission médiatrice de six membres, nommés trois par l'Assemblée générale, trois par le Conseil de Sécurité. en vue de choisir pour chaque siége non pourvu un nom à présenter à l'adoption séparée de l'Assemblée générale et du Conseil de Sécurité.

(2) Peuvent être portées sur cette liste, à l'unanimité, toutes personnes satisfaisant aux conditions requises, alors même qu'elles n'auraient pas figuré sur la liste de présentation visée à l'article 7.

(3) Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les membres de la Cour déjà nommés pourvoient aux sièges vacants, dans un délai à fixer par le Conseil de Sécurité, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée générale, soit dans le Conseil de Sécurité.

(4) Si parmi les juges il y a partage égal des voix, la voix du juge le plus âgé l'emporte.

Article 13.

(1) Les membres de la Cour sont élus pour neuf ans ils sonta rééligibles; toutefois, en ce qui concerne les juges nommés à la première élection de la Cour, les fonctions de cinq juges prendront fin au bout de trois ans, et celles de cinq autres juges prendront fin au bout de six ans.

(2) Les juges dont les fonctions prendront fin au terme des périodes initiales de trois et six ans mentionnées ci-dessus seront désignés par tirage au sort effectué par le Secrétaire général des Nations Unies, immédiatement après qu'il aura été procédé à la première élection.

(3) Les membres de la Cour restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

(4) En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire général des Nations Unies. Cette derniere notification emporte vacance du siège.

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire général des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de Sécurité.

Article 15.

Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Article 16.

(1) Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2) En cas de doute, la Cour décide.

Article 17.

(1) Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2) Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3) En cas de doute, la Cour décide.

Article 18.

(1) Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2) Le Secrétaire général des Nations Unies en est officiellement informé par le Greffier.

(3) Cette communication emporte vacance de siège.

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

/Sous réserve d'examen après que des dispositions à ce sujet auront été adoptées pour inclusion dans la Charte._7

Article 20.

Tout membre de la Cour doit, avant d'entrer en fonction, en séance publique, prendre engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

Article 21.

(1) La Cour élit, pour trois ans, son Président et son Vice-Président; ils sont rééligibles.

(2) Elle nomme son greffier et peut pourvoir à la nomination de tels autres fonctionnaires qui seraient nécessaires.

Article 22..

(1) Le siège de la Cour est fixé à La Haye. Ceci, toutefois, n'empêchera pas la Cour de siéger et d'escercer ses fonctions ailleurs lorsqu'elle le jugera désirable.

(2) Le Président et le Greffier résident au siège de la Cour.

Article 23.

(1) La Cour reste toujours en fonction, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

(2) Les membres de la Cour ont droit à des congés périodiques dont la date et la durée seront fixées par la Cour, en tenant compte de la distance qui sépare La Haye de leurs foyers.

(3) Les membres de la Cour sont tenus, a moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1) Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2) Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

(3) Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25.

(1) Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

(2) Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et a tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3) Toutefois, le quorum de neuf est suffisant pour constituer la Cour.

Article 26.

(1) La Cour peut, à toute époque, constituer une ou plusieurs chambres composées de 3 juges au moins selon ce qu'elle décidera, pour connaître de catégories déterminées d'affaires, par exemple d'affaires de travail et d'affaires concernant le transit et les communications.

(2) La Cour peut, à toute époque, constituer une chambre pour connaître d'une affaire déterminée. Le nombre des juges de cette chambre sera fixé par la Cour avec l'assentiment des parties.

(3) Les chambres prévues au présent article statueront, si les parties le demandent.

Article 27.

Tout arrêt rendu par l'une des chambres prévues aux articles 26 et 29 sera un arrêt de la Cour.

Article 28.

Les chambres prévues aux articles 26 et 29 peuvent, avec le consentement des parties, siéger et exercer leurs fonctions ailleurs qu'à La Haye.

Article 29.

En vue de la prompte expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelés à statuer en procédure sommaire lorsque les parties le demandent. Deux juges seront, en outre, désignés, pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger.

Article 30.

(1) La Cour détermine par un règlement le mode suivant lequel elle exerce ses attributions. Elle règle notamment sa procédure.

(2) Le Règlement de la Cour peut prévoir des assesseurs siégeant à la Cour ou dans ses chambres, sans droit de vote.

Article 31.

(1) Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

(2) Si la Cour compte sur le siège un juge de la nationalité d'une des parties, toute autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

(3) Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent.

(4) Le présent article s'applique dans le cas des articles 26 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

(5) Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

(6) Les juges désignés, comme il est dit aux paragraphes 2, 3 et 4 du présent article, doivent satisfaire aux prescriptions des articles 2, 17, paragraphe 2, 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

Article 32.

(1) Les membres de la Cour reçoivent un traitement annuel.

(2) Le Président reçoit une allocation annuelle spéciale.

(3) Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4) Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5) Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale des Nations Unies. Ils ne peuvent être diminués pendant la durée des fonctions.

(6) Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

(7) Un règlement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

(8) Les traitements, indemnités et allocations sont exempt de tout impôt.

Article 33.

Les frais de la Cour sont supportés par les Nations Unies de la manière que l'Assemblée générale décide.

CHAPITRE II

Compétence de la Cour

Article 34.

(1) Seuls les Etats ou les Membres des Nations Unies ont qualité pour se présenter devant la Cour.

(2) La Cour, dans les conditions prescrites par son Règlement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle, et recevra également les dits renseignements qui lui seraient présentés par ces organisations de leur propre initiative.

Article 35.

(1) La Cour est ouverte aux Membres des Nations Unies ainsi qu'aux Etats parties au présent Statut.

(2) Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3) Lorsqu'un Etat, qui n'est pas Membre des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

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Article 36.

[La Commission soumet ci-dessous deux textes pour le présent article, l'opinion des membres de la Commission étant divisée quant au choix de l'un ou de l'autre.]

[(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies ou dans les traités et conventions en vigueur.	[(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Chartedes Nations Unies ou dans les traités et conventions en vigueur.
(2) Les Membres des Nations Unies et Etats parties au présent Statut pourront, à n'importe quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou Etat acceptant la même obligation, la juridiction de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:	(2) Les Membres des Nations Unies et Etats parties au présent Statut reconnaissent entre eux comme obligatoire de plein droit et sans convention spéciale, la juridiction de la Cour sur tout différend d'ordre juridique ayant pour objet:
(a) l'interprétation d'un traité;	(a) l'interprétation d'un traité;
(b) tout point de droit international;	(b) tout point de droit international;
(c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international;	(c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international,
(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.	(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

(3) La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

(4) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.*/*

(3) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.*/*

Article 37.

Lorsqu'un traité ou convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou les Nations Unies, la Cour constituera cette juridiction.

/Sous réserve d'examen après adoption du texte de l'article 1er./

Article 38.

(1) La Cour applique:

(a) Les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige;

(b) La coutume internationale comme preuve d'une pratique générale accepté comme étant le droit:

(c) Les principes généraux de droit reconnus par les nations civilisées;

(d) Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

(2) La presente disposition ne porte pas atteinte à la faculté pour la Cour, si les parties sont d'accord, de statuer ex aequo et bono.

CHAPITRE III
Procédure

Article 39.

(1) Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

(2) A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle

des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

(3) La Cour, à la demande de toute partie, autorisera l'emploi par cette partie d'une langue autre que le français ou l'anglais.

Article 40.

(1) Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffier; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

(2) Le Greffier donne immédiatement communication de la requête à tous intéressés.

(3) Il en informe également les Membres des Nations Unies par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

Article 41.

(1) La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

(2) En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42.

(1) Les parties sont représentées par des agents.

(2) Elles peuvent se faire assister devant la Cour par des conseils ou des avocats.

Article 43.

(1) La procédure a deux phases: l'une écrite, l'autre orale.

(2). La procédure écrite comprend la communication à juge et à partie des mémoires, des contre-mémoires, et éventuellement, des répliques, ainsi que de toute pièce et document à l'appui.

(3). La communication se fait par l'entremise du Greffe dans l'ordre et les délais déterminés par la Cour.

(4) Toute pièce produite par l'une des parties doit être communiquée à l'autre en copie certifiée conforme.

(5) La procédure orale consiste dans l'audition par la Cour des témoins experts, agents, conseils et avocats.

Article 44.

(1). Pour toute notification à faire à d'autres personnes que les agents, conseils et avocats, la Cour s'adresse directement au gouvernement de l'Etat sur le territoire duquel la notification doit produire effet.

(2). Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Article 45.

Les débats sont dirigés par le Président et à défaut de celui-ci par le Vice-Président; en cas d'empêchement, par le plus ancien des juges présents.

Article 46.

L'audience est publique, à moins qu'il n'en soit autrement décidé par la Cour ou que les deux parties ne demandent que le public ne soit pas admis.

Article 47.

(1). Il est tenu de chaque audience un procès-verbal signé par le Greffier et le Président.

(2). Ce procès-verbal a seul caractère authentique.

Article 48.

La Cour rend des ordonnances pour la direction du procès, la détermination des formes et délais dans lesquels chaque partie doit finalement conclure; elle prend toutes les mesures que comporte l'administration des preuves.

Article 49.

La Cour peut, même avant tout débat, demander aux agents de produire tout document et de fournir toutes explications. En cas de refus, elle en prend acte.

Article 50.

A tout moment, la Cour peut confier une enquête ou une expertise à toute personne, corps, bureau, commission ou organe de son choix.

Article 51.

Au cours des débats, toutes questions utiles sont posées aux témoins et experts dans les conditions que fixera la Cour dans le règlement visé à l'article 30.

Article 52.

Après avoir reçu les preuves et témoignages dans les délais déterminés par elle, la Cour peut écarter toutes dépositions ou documents nouveaux qu'une des parties voudrait lui présenter sans l'assentiment de l'autre.

Article 53.

(1) Lorsqu'une des parties ne se présente pas, ou s'abstient de faire valoir ses moyens, l'autre partie peut demander à la Cour de lui adjuger ses conclusions.

(2) La Cour, avant d'y faire droit, doit s'assurer non seulement qu'elle a compétence aux termes des articles 36

et 37, mais que les conclusions sont fondées en fait et en droit.

Article 54.

(1) Quand les agents, avocats et conseils ont fait valoir, sous le contrôle de la Cour, tous les moyens qu'ils jugent utiles, le Président prononce la clôture des débats.

(2) La Cour se retire en Chambre du Conseil pour délibérer.

(3) Les délibérations de la Cour sont et restent secrètes.

Article 55.

(1) Les décisions de la Cour sont prises à la majorité des juges présents.

(2) En cas de partage de voix, la voix du Président ou de celui qui le remplace est prépondérante.

Article 56.

(1) L'arrêt est motivé.

(2) Il mentionne les noms des juges qui y ont pris part.

Article 57.

Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, tout juge aura le droit d'y joindre l'exposé de son opinion individuelle.

Article 58.

L'arrêt est signé par le Président et par le Greffier. Il est lu en séance publique, les agents dûment prévenus.

Article 59.

La décision de la Cour n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé.

Article 60.

L'arrêt est définitif et sans recours. En cas de contestation sur le sens et la portée de l'arrêt, il appartient à la Cour de l'interpréter, à la demande de toute partie.

Article 61.

(1) La revision de l'arrêt ne peut être éventuellement demandée à la Cour qu'à raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, était inconnu de la Cour et de la partie qui demande la revision, sans qu'il y ait, de sa part, faute à l'ignorer.

(2) La procédure de revision s'ouvre par un arrêt de la Cour constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la revision, et déclarant de ce chef la demande recevable.

(3) La Cour peut subordonner l'ouverture de la procédure en revision à l'exécution préalable de l'arrêt.

(4) La demande en revision devra être formée au plus tard dans le délai de six mois après la découverte du fait nouveau.

(5) Aucune demande de revision ne pourra être formée après l'expiration d'un délai de dix ans à dater de l'arrêt.

Article 62.

(1) Lorsqu'un Etat estime que dans un différend un intérêt d'ordre juridique est pour lui en cause, il peut adresser á la Cour une requête, à fin d'intervention.

(2) La Cour décide.

Article 63.

(1) Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffe les avertit sans délai.

(2) Chacun d'eux a le droit d'intervenir au procès, et s'il exerce cette faculté, l'interprétation contenue dans la sentence est également obligatoire à son égard.

Article 64.

S'il n'en est autrement décidé par la Cour, chaque partie supporte ses frais de procédure.

CHAPITRE IV.

Avis consultatifs

Article 65.

(1) Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par (le Président de l'Assemblée Générale ou) le Président du Conseil de Sécurité, soit par le Secrétaire Général des Nations Unies agissant en vertu d'instructions (de l'Assemblée Générale ou) du Conseil de Sécurité.

(2) La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

Article 66.

(1) Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres des Nations Unies par l'entremise du Secrétaire général des Nations Unies, ainsi qu'aux Etats admis à ester en justice devant la Cour.

(2) En outre, à tout Membre des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siége pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

(3) Si un des Membres des Nations Unies ou des Etats admis à ester devant la Cour, n'ayant pas été l'objet de la communication spéciale visée au paragraphe 2 du présent article, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

(4) Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Article 67.

La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire général des Nations Unies et les représentants des Membres des Nations Unies, des Etats et des organisations internationales directement intéressés étant prévenus.

Article 68.

Dans l'exercice de ses attributions consultatives, la Cour s'inspirera en outre des dispositions du présent Statut qui s'appliquent en matière contentieuse, dans la mesure où elle les reconnaîtra applicables.

CHAPITRE V.

Amendement

Article 69.

Les amendements au présent Statut entreront en vigueur pour toutes les parties au Statut quand ils auront été adoptés

par une majorité des deux tiers des membres de l'Assemblée générale et ratifiés, selon leur procédure constitutionnelle. par les Etats ayant un siége permanent au Conseil de Sécurité et par la majorité des autres parties au présent Statut.

/Ce texte a été adopté en vue de l'adaptation du texte au chapitre XI du Projet de Dumbarton Oaks, sous réserve de nouvel examen au cas de modification à ce texte./

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THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 75 (revised)*
G/62
April 27, 1945

DRAFT OF

STATUTE OF AN INTERNATIONAL COURT OF JUSTICE

REFERRED TO IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS

SUBMITTED BY THE
UNITED NATIONS COMMITTEE OF JURISTS
TO THE
UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION
AT SAN FRANCISCO

(San Francisco, April 27, 1945)

[*This Document constitutes the text of the draft Statute transmittted to the Conference]

Article 1.

[For reasons stated in the accompanying Report, the text of Article 1 has been left in blank pending decision by The United Nations Conference at San Francisco.]

CHAPTER I

Organization of the Court

Article 2.

The Court shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3.

The Court shall consist of fifteen members no two of whom may be nationals of the same State or Member of The United Nations.

Article 4.

(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.	(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated in accordance with Articles 5 and 6.
(2) In the case of Members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members	(2) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembl

of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.	on the proposal of the Security Council.
(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.	
Article 5.	
(1) At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.	At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the Governments of Members of the United Nations and of States parties to the present Statute inviting each of them to undertake, within a given time, the nomination of a person of their own nationality in a position to accept the duties of a member of the Court.
(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.	

Article 6.

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Before making these nominations, each Government is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7.

(1) The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12 (2), these shall be the only persons eligible.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.

(1) Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected	Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.
(2) In the event of more than one national of the same State or Member of The United Nations obtaining an absolute majority of the votes of both the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.	

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

(1) If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

(3) If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

(4) In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the

judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of The United Nations immediately after the first election has been completed.

(3) The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

Article 14.

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council

Article 15.

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16.

(1) No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

(2) Any doubt on this point shall be settled by the decision of the Court.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3) Any doubt on this point shall be settled by the decision of the Court.

Article 18.

(1) No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of The United Nations by the Registrar.

(3) This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

/Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter./

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 21.

(1) The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22.

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

(2) The President and Registrar shall reside at the seat of the Court.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

(1) If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1) The full Court shall sit except when it is expressly provided otherwise.

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

Article 26.

(1) The Court may from time to time form one or more

chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

Article 27.

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30.

(1) The Court shall frame rules for carrying out its functions. In particular, it shal lay down rules of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31.

(1) Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to choose a judge as provided in paragraph (2) of this Article.

(4) The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

(6) Judges chosen as laid down in paragraphs (2), (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17(2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32.

(1) Each member of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

(3) The Vice-President shall receive a special allowance for every day on which he acts as President.

(4) The judges appointed under Article 31, other than members of the Court, shall receive indemnities for each day on which they exercise their functions.

(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of The United Nations. They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

Article 33.

The expenses of the Court shall be borne by The United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

Competence of the Court

Article 34.

(1) Only States or Members of The United Nations may be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

Article 35.

(1) The Court shall be open to the Members of The United Nations and also to States parties to the present Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of The United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36

[The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.]

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations or in treaties and conventions in force.

(2) The Members of The United Nations and the States parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) the interpretation of a treaty;

(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

(3) The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations or in treaties and conventions in force.

(2) The Members of The United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory ipso facto and without special agreement in any legal dispute concerning:

(a) the interpretation of a treaty; or

(b) any question of international law; or

(c) the existence of any fact which, if established, would constitute a breach of an international obligation; or

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.]

(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court./

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court shall be such tribunal.

/Subject to reconsideration after the adoption of a text of Article 1./

Article 38.

(1) The Court shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use

the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

(3) The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties shall be indicated.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

(2) Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.

Article 43.

(1) The procedure shall consist of two parts: written and oral.

(2) The written proceedings shall consist of the communication to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3) These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

(4) A certified copy of every document produced by one party shall be communicated to the other party.

(5) The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1) For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2) The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

(1) Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2) These minutes alone shall be authentic.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

(1) Whenever one of the parties does not appear before the Court, or fails to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2) The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with

Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

(3) The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1) All questions shall be decided by a majority of the judges present.

(2) In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56.

(1) The judgment shall state the reasons on which it is based.

(2) It shall contain the names of the judges who have taken part in the decision.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

(1) An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2) The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3) The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4) The application for revision must be made at latest within six months of the discovery of the new fact.

(5) No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62.

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

(2) It shall be for the Court to decide upon this request.

Article 63.

(1) Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of The United Nations, through the Secretary-General of The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or

international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3) Should any Member of The United Nations or State entitled to appear before the Court have failed to receive the special communication referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4) Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of The United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

Amendment

Article 69.

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of The United Nations having permanent

membership on the Security Council and by a majority of the other parties to the Statute.

[The above text of Article 69 was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed.]

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 76 (revised)
G/63
April 27, 1945

PROJET DE

STATUT DE LA COUR INTERNATIONALE DE JUSTICE

VISEE AU CHAPITRE VII DES PROPOSITIONS DE DUMBARTON OAKS

PROPOSE PAR LE
COMITE DE JURISTES DES NATIONS UNIES
A LA
CONFERENCE DES NATIONS UNIES
POUR L'ORGANISATION INTERNATIONALE
A SAN FRANCISCO

(San Francisco, le 27 Avril 1945)

Article 1.

[Pour les raisons indiquées dans le rapport ci-joint, le texte de cet article a été laissé en blanc, en attendant la décision de la Conférence des Nations Unies à San Francisco.]

CHAPITRE I

Organisation de la Cour

Article 2.

La Cour est un corps de magistrats indépendants, élus sans égard à leur nationalité parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international.

Article 3.

La Cour se compose de quinze membres. Elle ne pourra comprendre plus d'un ressortissant du même Etat ou membre des Nations Unies.

Article 4.

(1) Les Membres de la Cour sont élus par l'Assemblée générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées par les groupes nationaux de la Cour permanente d'Arbitrage conformément aux dispositions suivantes.	(1) Les Membres de la Cour sont élus par l'Assemblée générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées conformément aux articles 5 et 6
(2) En ce qui concerne les Membres des Nations Unies qui ne sont pas représentés à la Cour permanente d'Arbitrage	(2) En l'absence d'accord spécial, l'Assemblée générale, sur la proposition du Conseil de Sécurité, réglera les condi-

les listes de candidats seront présentées par des groupes nationaux, désignés à cet effet par leurs gouvernements, dans les mêmes conditions que celles stipulées pour les membres de la Cour d'Arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.

(3) En l'absence d'un accord spécial, l'Assemblée générale, sur la proposition du Conseil de Sécurité, réglera les conditions auxquelles peut participer à l'élection des membres de la Cour, un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre des Nations Unies.

tions auxquelles peut participer à l'élection des membres de la Cour un Etat qui, tout en ayent accepté le Statut de la Cour, n'est pas Membre des Nations Unies.

Article 5.

(1) Trois mois au moins avant la date de l'élection, le Secrétaire général des Nations Unies invite par écrit les membres de la Cour permanente d'Arbitrage ainsi que les membres des groupes nationaux désignés conformément au paragraphe 2 de l'article 4, à procéder dans un délai déterminé par les groupes nationaux à la présentation de personnes en situation de remplir les fonctions de membre de la Cour

Trois mois au moins avant la date de l'élection, le Secrétaire général des Nations Unies invite par écrit les Gouvernements des Nations Unies et des Etats parties au présent Statut à procéder, dans un délai determiné, à la présentation d'une personne de sa nationalité en situation de remplir les fonctions de membre de la Cour.

(2) Chaque groupe ne peut en aucun cas prèsenter plus de quatre personnes dont deux au plus de sa nationalité. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque groupe national de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

Avant de procéder à cette désignation, il est recommandé à chaque gouvernement de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

Article 7.

(1) Le Secrétaire général des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées: seules ces personnes sont éligibles, sauf le cas prévu à l'article 12, paragraphe 2.

(2) Le Secrétaire général communique cette liste à l'Assemblée générale et au Conseil de Sécurité.

Article 8.

L'Assemblée générale et le Conseil de Sécurité procèdent indépendamment l'un de l'autre à l'élection des membres de la Cour.

Article 9.

Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent dans l'ensemble la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde.

Article 10.

(1) Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée générale et dans le Conseil de Sécurité.	Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée générale et dans le Conseil de Sécurité.
(2) Au cas où le double scrutin de l'Assemblée générale et du Conseil de Sécurité se porterait sur plus d'un ressortissant du même Etat ou Membre des Nations Unies, le plus âgé est seul élu.	

Article 11.

Si, après la première séance d'élection, il reste encore des sièges à pourvoir, il est procédé, de la même manière, à une seconde et, s'il est nécessaire, à une troisième.

Article 12.

(1) Si, après la troisième séance d'élection, il reste encore des sièges à pourvoir, il peut être à tout moment formé sur la demande, soit de l'Assemblée générale, soit du Conseil de Sécurité, une Commission médiatrice de six membres, nommés trois par l'Assemblée générale, trois par le Conseil de Sécurité, en vue de choisir pour chaque siège non pourvu un nom à présenter à l'adoption séparée de l'Assemblée générale et du Conseil de Sécurité.

(2) Peuvent être portées sur cette liste, à l'unanimité, toutes personnes satisfaisant aux conditions requises, alors même qu'elles n'auraient pas figuré sur la liste de présentation visée à l'article 7.

(3) Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les membres de la Cour déjà nommés pourvoient aux sièges vacants, dans un délai à fixer par le Conseil de Sécurité, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée générale, soit dans le Conseil de Sécurité.

(4) Si parmi les juges il y a partage égal des voix, la voix du juge le plus âgé l'emporte.

Article 13.

(1) Les membres de la Cour sont élus pour neuf ans. Ils sont rééligibles; toutefois, en ce qui concerne les juges nommés à la première élection de la Cour, les fonctions de cinq juges prendront fin au bout de trois ans, et celles de cinq autres juges prendront fin au bout de six ans.

(2) Les juges dont les fonctions prendront fin au terme des périodes initiales de trois et six ans mentionnées ci-dessus seront désignés par tirage au sort effectué par le Secrétaire général des Nations Unies, immédiatement après qu'il aura été procédé à la première élection.

(3) Les membres de la Cour restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

(4) En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire général des Nations Unies. Cette derniere notification emporte vacance du siège.

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après: dans le mois qui suivra la vacance, le Secrétaire général des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de Sécurité.

Article 15.

Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Article 16.

(1) Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2) En cas de doute, la Cour décide.

Article 17.

(1) Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2) Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3) En cas de doute, la Cour décide.

Article 18.

(1) Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2) Le Secrétaire général des Nations Unies en est officiellement informé par le Greffier.

(3) Cette communication emporte vacance de siège.

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

/Sous réserve d'examen après que des dispositions à ce sujet auront été adoptées pour inclusion dans la Charte._7

Article 20.

Tout membre de la Cour doit, avant d'entrer en fonction, en séance publique, prendre engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

Article 21.

(1) La Cour élit, pour trois ans, son Président et son Vice-Président; ils sont rééligibles.

(2) Elle nomme son greffier et peut pourvoir à la nomination de tels autres fonctionnaires qui seraient nécessaires.

Article 22.

(1) Le siège de la Cour est fixé à La Haye. Ceci, toutefois, n'empêchera pas la Cour de siéger et d'exercer ses fonctions ailleurs lorsqu'elle le jugera désirable.

(2) Le Président et le Greffier résident au siège de la Cour.

Article 23.

(1) La Cour reste toujours en fonction, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

(2) Les membres de la Cour ont droit à des congés périodiques dont la date et la durée seront fixées par la Cour, en tenant compte de la distance qui sépare La Haye de leurs foyers.

(3) Les membres de la Cour sont tenus, a moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1) Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2) Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci.

(3) Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25.

(1) Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

(2) Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3) Toutefois, le quorum de neuf est suffisant pour constituer la Cour.

Article 26.

(1) La Cour peut, à toute époque, constituer une ou plusieurs chambres composées de 3 juges au moins selon ce qu'elle décidera, pour connaître de catégories déterminées d'affaires, par exemple d'affaires de travail et d'affaires concernant le transit et les communications.

(2) La Cour peut, à toute époque, constituer une chambre pour connaître d'une affaire déterminée. Le nombre des juges de cette chambre sera fixé par la Cour avec l'assentiment des parties.

(3) Les chambres prévues au présent article statueront, si les parties le demandent.

Article 27.

Tout arrêt rendu par l'une des chambres prévues aux articles 26 et 29 sera un arrêt de la Cour.

Article 28.

Les chambres prévues aux articles 26 et 29 peuvent, avec le consentement des parties, siéger et exercer leurs fonctions ailleurs qu'à La Haye.

Article 29.

En vue de la prompte expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelés à statuer en procédure sommaire lorsque les parties le demandent. Deux juges seront, en outre, désignés, pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger.

Article 30.

(1) La Cour détermine par un règlement le mode suivant lequel elle exerce ses attributions. Elle règle notamment sa procédure.

(2) Le Règlement de la Cour peut prévoir des assesseurs siégeant à la Cour ou dans ses chambres, sans droit de vote.

Article 31.

(1) Les juges de la nationalite de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

(2) Si la Cour compte sur le siège un juge de la nationalité d'une des parties, toute autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

(3) Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent.

(4) Le présent article s'applique dans le cas des articles 26 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

(5) Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

(6) Les juges désignés, comme il est dit aux paragraphes 2, 3 et 4 du présent article, doivent satisfaire aux prescriptions des articles 2, 17, paragraphe 2, 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

Article 32.

(1) Les membres de la Cour reçoivent un traitement annuel.

(2) Le Président reçoit une allocation annuelle spéciale.

(3) Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4) Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5) Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale des Nations Unies. Ils ne peuvent être diminués pendant la durée des fonctions.

(6) Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

(7) Un règlement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

(8) Les traitements, indemnités et allocations sont exempt de tout impôt.

Article 33.

Les frais de la Cour sont supportés par les Nations Unies de la manière que l'Assemblée générale décide.

CHAPITRE II

Compétence de la Cour

Article 34.

(1) Seuls les Etats ou les Membres des Nations Unies ont qualité pour se présenter devant la Cour.

(2) La Cour, dans les conditions prescrites par son Règlement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle, et recevra également les dits renseignements qui lui seraient présentés par ces organisations de leur propre initiative.

Article 35.

(1) La Cour est ouverte aux Membres des Nations Unies ainsi qu'aux Etats parties au présent Statut.

(2) Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3) Lorsqu'un Etat, qui n'est pas Membre des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefoix, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

Article 36.

[La Commission soumet ci-dessous deux textes pour le présent article, l'opinion des membres de la Commission étant divisée quant au choix de l'un ou de l'autre.]

[(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies ou dans les traités et conventions en vigueur.	[(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Chartedes Nations Unies ou dans les traités et conventions en vigueur.
(2) Les Membres des Nations Unies et Etats parties au présent Statut pourront, à n'importe quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou Etat acceptant la même obligation, la juridiction de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:	(2) Les Membres des Nations Unies et Etats parties au présent Statut reconnaissent entre eux comme obligatoire de plein droit et sans convention spéciale, la juridiction de la Cour sur tout différend d'ordre juridique ayant pour objet:
(a) l'interprétation d'un traité;	(a) l'interprétation d'un traité;
(b) tout point de droit international;	(b) tout point de droit international;
(c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international;	(c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international:
(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.	(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

(3) La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

(4) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.]

(3) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.]

Article 37.

Lorsqu'un traité ou convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou les Nations Unies, la Cour constituera cette juridiction.

[Sous réserve d'examen après adoption du texte de l'article 1er.]

Article 38.

(1) La Cour applique:

(a) Les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige;

(b) La coutume internationale comme preuve d'une pratique générale accepté comme étant le droit;

(c) Les principes généraux de droit reconnus par les nations civilisées;

(d) Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés les différentes nations, comme moyen auxiliaire de détermination des règles de droit.

(2) La présente disposition ne porte pas atteinte à la faculté pour la Cour, si les parties sont d'accord, de statuer *ex aequo et bono*.

CHAPITRE III
Procédure

Article 39.

(1) Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

(2) A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle

des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

(3) La Cour, à la demande de toute partie, autorisera l'emploi par cette partie d'une langue autre que le français ou l'anglais.

Article 40.

(1) Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffier; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

(2) Le Greffier donne immédiatement communication de la requête à tous intéressés.

(3) Il en informe également les Membres des Nations Unies par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

Article 41.

(1) La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

(2) En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42.

(1) Les parties sont représentées par des agents.

(2) Elles peuvent se faire assister devant la Cour par des conseils ou des avocats.

Article 43.

(1) La procédure a deux phases: l'une écrite, l'autre orale.

(2). La procédure écrite comprend la communication à juge et à partie des mémoires, des contre-mémoires, et éventuellement, des répliques, ainsi que de toute pièce et document à l'appui.

(3). La communication se fait par l'entremise du Greffe dans l'ordre et les délais déterminés par la Cour.

(4) Toute pièce produite par l'une des parties doit être communiquée à l'autre en copie certifiée conforme.

(5). La procédure orale consiste dans l'audition par la Cour des témoins experts, agents, conseils et avocats.

Article 44.

(1). Pour toute notification à faire à d'autres personnes que les agents, conseils et avocats, la Cour s'adresse directement au gouvernement de l'Etat sur le territoire duquel la notification doit produire effet.

(2). Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Article 45.

Les débats sont dirigés par le Président et à défaut de celui-ci par le Vice-Président; en cas d'empêchement, par le plus ancien des juges présents.

Article 46.

L'audience est publique, à moins qu'il n'en soit autrement décidé par la Cour ou que les deux parties ne demandent que le public ne soit pas admis.

Article 47.

(1). Il est tenu de chaque audience un procès-verbal signé par le Greffier et le Président.

(2). Ce procès-verbal a seul caractère authentique.

Article 48.

La Cour rend des ordonnances pour la direction du procès, la détermination des formes et délais dans lesquels chaque partie doit finalement conclure; elle prend toutes les mesures que comporte l'administration des preuves.

Article 49.

La Cour peut, même avant tout débat, demander aux agents de produire tout document et de fournir toutes explications. En cas de refus, elle en prend acte.

Article 50.

A tout moment, la Cour peut confier une enquête ou une expertise à toute personne, corps, bureau, commission ou organe de son choix.

Article 51.

Au cours des débats, toutes questions utiles sont posées aux témoins et experts dans les conditions que fixera la Cour dans le règlement visé à l'article 30.

Article 52.

Après avoir reçu les preuves et témoignages dans les délais déterminés par elle, la Cour peut écarter toutes dépositions ou documents nouveaux qu'une des parties voudrait lui présenter sans l'assentiment de l'autre.

Article 53.

(1) Lorsqu'une des parties ne se présente pas, ou s'abstient de faire valoir ses moyens, l'autre partie peut demander à la Cour de lui adjuger ses conclusions.

(2) La Cour, avant d'y faire droit, doit s'assurer non seulement qu'elle a compétence aux termes des articles 36

et 37, mais que les conclusions sont fondées en fait et en droit.

Article 54.

(1) Quand les agents, avocats et conseils ont fait valoir, sous le contrôle de la Cour, tous les moyens qu'ils jugent utiles, le Président prononce la clôture des débats.

(2) La Cour se retire en Chambre du Conseil pour délibérer.

(3) Les délibérations de la Cour sont et restent secrètes.

Article 55.

(1) Les décisions de la Cour sont prises à la majorité des juges présents.

(2) En cas de partage de voix, la voix du Président ou de celui qui le remplace est prépondérante.

Article 56.

(1) L'arrêt est motivé.

(2) Il mentionne les noms des juges qui y ont pris part.

Article 57.

Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, tout juge aura le droit d'y joindre l'exposé de son opinion individuelle.

Article 58.

L'arrêt est signé par le Président et par le Greffier. Il est lu en séance publique, les agents dûment prévenus.

Article 59.

La décision de la Cour n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé.

Article 60.

L'arrêt est définitif et sans recours. En cas de contestation sur le sens et la portée de l'arrêt, il appartient à la Cour de l'interpréter, à la demande de toute partie.

Article 61.

(1) La revision de l'arrêt ne peut être éventuellement demandée à la Cour qu'à raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, était inconnu de la Cour et de la partie qui demande la revision, sans qu'il y ait, de sa part, faute à l'ignorer.

(2) La procédure de revision s'ouvre par un arrêt de la Cour constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la revision, et déclarant de ce chef la demande recevable.

(3) La Cour peut subordonner l'ouverture de la procédure en revision à l'exécution préalable de l'arrêt.

(4) La demande en revision devra être formée au plus tard dans le délai de six mois après la découverte du fait nouveau.

(5) Aucune demande de revision ne pourra être formée après l'expiration d'un délai de dix ans à dater de l'arrêt.

Article 62.

(1) Lorsqu'un Etat estime que dans un différend un intérêt d'ordre juridique est pour lui en cause, il peut adresser á la Cour une requête, à fin d'intervention.

(2) La Cour décide.

Article 63.

(1) Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffe les avertit sans délai.

(2) Chacun d'eux a le droit d'intervenir au procès, et s'il exerce cette faculté, l'interprétation contenue dans la sentence est également obligatoire à son égard.

Article 64.

S'il n'en est autrement décidé par la Cour, chaque partie supporte ses frais de procédure.

CHAPITRE IV.

Avis consultatifs

Article 65.

(1) Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par (le Président de l'Assemblée Générale ou) le Président du Conseil de Sécurité, soit par le Secrétaire Général des Nations Unies agissant en vertu d'instructions (de l'Assemblée Générale ou) du Conseil de Sécurité.

(2) La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

Article 66.

(1) Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres des Nations Unies par l'entremise du Secrétaire général des Nations Unies, ainsi qu'aux Etats admis à ester en justice devant la Cour.

(2) En outre, à tout Membre des Nations Unies, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siége pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

(3) Si un des Membres des Nations Unies ou des Etats admis à ester devant la Cour, n'ayant pas été l'objet de la communication spéciale visée au paragraphe 2 du présent article, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

(4) Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Article 67.

La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire général des Nations Unies et les représentants des Membres des Nations Unies, des Etats et des organisations internationales directement intéressés étant prévenus.

Article 68.

Dans l'exercice de ses attributions consultatives, la Cour s'inspirera en outre des dispositions du présent Statut qui s'appliquent en matière contentieuse, dans la mesure où elle les reconnaîtra applicables.

CHAPITRE V.

Amendement

Article 69.

Les amendements au présent Statut entreront en vigueur pour toutes les parties au Statut quand ils auront été adoptés

par une majorité des deux tiers des membres de l'Assemblée générale et ratifiés, selon leur procédure constitutionnelle. par les Etats ayant un siége permanent au Conseil de Sécurité et par la majorité des autres parties au présent Statut.

/Ce texte a été adopté en vue de l'adaptation du texte au chapitre XI du Projet de Dumbarton Oaks, sous réserve de nouvel examen au cas de modification à ce texte./

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 82
G/69
April 20, 1945

COMPARATIVE TEXT

STATUTE OF THE PERMANENT

COURT OF INTERNATIONAL JUSTICE*

WITH DRAFT STATUTE PROPOSED BY COMMITTEE OF JURISTS

/The barred words are omitted, and the underscored words are added, by the proposed revisions./

Article 1.

~~A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of The League of Nations. This Court shall be in addition to the Court of Arbitration organised by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.~~

/For resons stated in the accompanying report, the text of Article 1 has been left in blank pending decision by the United Nations Conference at San Francisco./

Chapter I

Organization of the Court

Article 2.

The ~~Permanent~~ Court ~~of International Justice~~ shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3.

The Court shall consist of fifteen members, no two of whom may be nationals of the same State or Members of The United Nations.

Article 4.

/(1) The members of the Court shall be elected by the General Assembly and

/(1) The members of the Court shall be elected by the General Assembly and by the by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

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*English version, revision in force on February 1, 1936.

(2) In the case of Members of ~~the League of Nations~~ The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of ~~the League of Nations~~ The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.]

Security Council of The United Nations from a list of persons nominated in accordance with Articles 5 and 6.

(2) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.]

Article 5.

[(1) At least three months before the date of the election, the Secretary-General of ~~the League of Nations~~ The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States ~~mentioned in the Annex to the~~

[At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the Governments of Members of The United Nations and of States parties to the present Statute inviting each of them to undertake, within a given time, the

~~Covenant or to the States which join the League subsequently~~ which are parties to the present Statute, and to the ~~persons~~ members of the national groups appointed under ~~paragraph 2 of~~ Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case ~~must~~ may the number of candidates nominated by a group be more than double the number of seats to be filled.]

nomination of a person of their own nationality in a position to accept the duties of a member of the Court.]

Article 6.

[Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.]

[Before making these nominations, each Government is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.]

Article 7.

(1) The Secretary-General of ~~the League of Nations~~ The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article ~~12, paragraph 2~~ 12 (2), these shall be the only persons eligible. ~~for appointment~~.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind that ~~not only should all the persons appointed as members of the Court~~ not only that the persons to be elected should individually possess the qualifications required, but ~~the whole body also should represent~~ also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.

[(1) Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

(2) In the event of more than one national of the same State or Member of ~~the League~~ The United Nations ~~being elected by~~ obtaining an absolute majority of the votes of both the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.]

[Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.]

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

(1) If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the

Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles ~~4 and~~ 5 7.

(3) If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been ~~appointed~~ elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

(4) In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

~~They may be re-elected.~~

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of the United Nations immediately after the first election has been completed.

(3) ~~They~~ The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of ~~the League of Nations~~ The United Nations. This last notification makes the place vacant.

~~This last notification makes the place vacant.~~

Article 14.

Vacancies ~~which may occur~~ shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of ~~the League of Nations~~ The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council ~~at its next session~~.

Article 15.

A member of the Court elected to replace a member whose ~~period of appointment~~ term of office has not expired, ~~will~~ shall hold ~~the appointment~~ office for the remainder of his predecessor's term.

Article 16.

(1) ~~The~~ No member~~s~~ of the Court may ~~not~~ exercise any political or administrative function, ~~nor~~ or engage in any other occupation of a professional nature.

(2) Any doubt on this point ~~is~~ shall be settled by the decision of the Court.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken ~~an active~~ part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3) Any doubt on this point ~~is~~ shall be settled by the decision of the Court.

Article 18.

(1) ~~A~~ No member of the Court can ~~not~~ be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of ~~the League of Nations~~ The United Nations by the Registrar.

(3) This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

[Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter.]

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 21.

(1) The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

~~The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.~~

Article 22.

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

(2) The President and Registrar shall reside at the seat of the Court.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

~~Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in travelling.~~

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permenently at the disposal of the Court.

Article 24.

(1) If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1) The full Court shall sit except when it is expressly provided otherwise.

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

Article 26.

~~Labor cases, particularly cases referred to in Part XIII (Labor) of the Treaty of Versailles and the corresponding portions of the other treaties of peace, shall be heard and determined by the Court under the following conditions:~~

~~The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing~~

a judge who finds it impossible to sit. If the parties so demand,-cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases,-the judges will be assisted by four technical assessors sitting with them, but without the right to vote,-and chosen with a view to insuring a just representation of the competing interests.

The technical assessors shall be chosen for each-particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labor Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate,-as to one-half, representatives-of the workers, and, as to one-half, representatives of employers from the list-referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other treaties of peace.

Recourse may always be had-to the summary procedure provided for in Article-29, in the cases referred to in the first paragraph of the present article, if the parties so request.

In Labor cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

(1) The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided in this Article if the parties so request.

Article 27.

~~Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions.~~

~~The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.~~

~~The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.~~

~~Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.~~

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The ~~special~~ chambers provided for in Articles 26 and ~~27~~ 29 may, with the consent of the parties ~~to the dispute~~, sit and exercise their functions elsewhere than at The Hague.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges ~~who~~, which, at the request of the ~~contesting~~ parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing ~~a judge~~ judges who ~~finds~~ find it impossible to sit.

Article 30.

(1) The Court shall frame rules for ~~regulating its procedure~~ carrying out its functions. In particular, it shall lay down rules ~~for summary~~ of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its Chambers, without the right to vote.

Article 31.

(1) Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, ~~the~~ any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to ~~select~~ choose a judge as provided in ~~the preceding~~ paragraph (2) of this Article.

(4) The ~~present~~ provisions of this Article shall apply to the case of Articles 26~~, 27~~ and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point ~~is~~ shall be settled by the decision of the Court.

(6) Judges ~~selected~~ chosen as laid down in paragraphs (2) (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17 (~~paragraph~~ 2), 20 and 24 of ~~this~~ the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

(1) ~~The~~ Each ~~members~~ of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

(3) The Vice-President shall receive a special allowance for every day on which he acts as President.

(4) The judges appointed under Article 31, other than members of the Court, shall receive **an indemnity** indemnities for each day on which they **sit** exercise their functions.

(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of **the League of Nations** The United Nations **on the proposal of the Council.** They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

Article 33.

The expenses of the Court shall be borne by **the League of Nations** The United Nations, in such a manner as shall be decided by the General Assembly, **upon the proposal of the Council.**

Chapter II

Competence of the Court

Article 34.

(1) Only States or Members of ~~the League of Nations~~ The United Nations ~~can~~ may be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

Article 35.

(1) The Court shall be open to the Members of ~~the League~~ The United Nations and also to States ~~mentioned in the Annex to the Covenant~~ parties to the Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such ~~provisions~~ conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of ~~the League of Nations~~ The United Nations is a party to a ~~dispute~~ case, the Court ~~will~~ shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

Article 36.

[The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.]

[Alternative 1]	[Alternative 2]
[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations or in treaties and conventions in force.	[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations or in treaties and conventions in force.
(2) The Members of ~~the League of Nations~~ The United	(2) The Members of ~~the League of Nations~~ The United

Nations and the States **mentioned in the Annex to the Covenant** parties to the present Statute may **either when signing or ratifying the Protocol to which the present Statute is adjourned, or at a later moment** at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) the interpretation of a treaty;

(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

(3) The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.]

Nations and the States **mentioned in the Annex to the Covenant** parties to the present Statute **may, either when signing or ratifying the Protocol to which the present Statute is adjourned, or at a later moment, declare that they** recognize as among themselves the jurisdiction of the Court as compulsory ipso facto and without special agreement in **relation to any other Member or State accepting the same obligation in all or** any **of the classes of** legal **disputes** dispute concerning:

(a) the interpretation of a treaty; or

(b) any question of international law; or

(c) the existence of any fact which, if established, would constitute a breach of an international obligation; or

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.]

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court ~~will~~ shall be such tribunal.

[Subject to reconsideration after the adoption of a text of Article 1.]

Article 38.

(1) The Court shall apply:

~~1.~~ (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

~~2.~~ (b) International custom, as evidence of a general practice accepted as law;

~~3.~~ (c) The general principles of law recognized by civilized nations;

~~4.~~ (d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

Chapter III

Procedure

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment ~~will~~ shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment ~~will~~ shall be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court

~~will~~ shall be given in French and English. In this case the Court ~~will~~ shall at the same time determine which of the two texts shall be considered as authoritative.

(3) The Court ~~may~~ shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties ~~must~~ shall be indicated.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of ~~the League of Nations~~ The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to ~~reserve~~ preserve the respective rights of either party.

(2) Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.

Article 43.

(1) The procedure shall consist of two parts: written and oral.

(2) The written proceedings shall consist of the communication to the ~~judges~~ Court and to the parties of

~~Cases~~ Memorials, Counter-~~Cases~~ Memorials and, if necessary, Replies; also all papers and documents in support.

(3) These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

(4) A certified copy of every document produced by one party shall be communicated to the other party.

(5) The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1) For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2) The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

(1) Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2) These minutes alone shall be ~~the only~~ authentic. ~~record~~.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49..

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

(1) Whenever one of the parties ~~shall~~ does not appear before the Court, or ~~shall~~ fails to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2) The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with

Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

(3) The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1) All questions shall be decided by a majority of the judges present. ~~at the hearing~~.

(2) In the event of an equality of votes, the President or ~~his deputy~~ the judge who acts in his place shall have a casting vote.

Article 56.

(1) The judgment shall state the reasons on which it is based.

(2) It shall contain the names of the judges who have taken part in the decision.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, ~~dissenting judges are~~ any judge shall be entitled to deliver a separate opinion.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

(1) An application for revision of a judgment ~~can~~ may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2) The proceedings for revision ~~will~~ shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3) The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4) The application for revision must be made at latest within six months of the discovery of the new fact.

(5) No application for revision may be made after the lapse of ten years from the date of the ~~sentence~~ judgment.

Article 62.

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene, ~~as a third party~~.

(2) It ~~will~~ shall be for the Court to decide upon this request.

Article 63.

(1) Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

Chapter IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council ~~of the League of Nations~~, or by the Secretary-General of ~~the League~~ The United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

~~1.~~ (1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of ~~the League of Nations~~ The United Nations, through the Secretar-General ~~of the League~~ The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of ~~the League~~ The United Nations or State ~~admitted~~ entitled to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3) Should any Member of The United Nations or State ~~referred to in the first paragraph~~ entitled to appear before the Court have failed to receive the special communication ~~specified above~~, referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

~~2.~~ (4) Members, States, and organizations having presented written or oral statements or both shall be ~~admitted~~ permitted to comment on the statements made by other Members, States, or organizations in the form, ~~to~~ the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of ~~the League of Nations~~ The United Nations and to the representatives of Members of ~~the League~~ The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

Chapter V

Amendment

Article 69.

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of The United Nations having permanent membership on the Security Council and by a majority of the other parties to the Statute.

[The above text of Article 69 was adapted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed.]

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 86
G/73
April 25, 1945

REPORT
ON DRAFT OF
STATUTE OF AN INTERNATIONAL COURT OF JUSTICE
REFERRED TO IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS

(Professor Jules Basdevant, Rapporteur)

SUBMITTED BY THE
UNITED NATIONS COMMITTEE OF JURISTS
TO THE
UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION
AT SAN FRANCISCO

(San Francisco, April 25, 1945)

(This report is a revision of Doc. 61 (revised) which was issued in Washington on April 20.)

The Dumbarton Oaks Proposals having provided that The United Nations International Organization should include among its principal organs, an International Court of Justice, a Committee of Jurists designated by The United Nations met in Washington for the purpose of preparing and submitting to the San Francisco Conference a draft Statute of the said Court. The purpose of this report is to present the result of the work of this Committee. It could not in any way whatsoever prejudice the decisions of the Conference. The jurists who have drawn it up have, in so doing, acted as jurists without binding the Governments which appointed them.

The Dumbarton Oaks Proposals provided that the Court would be the principal judicial organ of The United Nations, that its Statute, annexed to The United Nations Charter, would be an integral part thereof and that all the Members of the International Organization should ipso facto be parties to the Statute of the Court. It did not decide whether the said Court would be the Permanent Court of International Justice, the Statute of which would be preserved with amendments, or whether it would be a new Court the Statute of which would, however, be based on the Statute of the existing Court. In the preparation of its draft, the Committee adopted the first method, and it was recalled before it that the Permanent Court of International Justice had functioned for twenty years to the satisfaction of the litigants and that, if violence had suspended its activity, at least this institution had not failed in its task.

Nevertheless, the Committee considered that it was for the San Francisco Conference (1) to determine in what form the mission of the Court to be the principal judicial organ of The United Nations shall be stated, (2) to judge whether it is necessary to recall, in this connection, the present or possible existence of other international courts, (3) to consider the Court as a new court or as the continuance of the Court established in 1920, the Statute of which, revised for the first time in 1929, will again be revised in 1945. These are not questions of pure form; the last, in particular, affects the operation of numerous treaties containing reference to the jurisdiction of the Permanent Court of International Justice.

For these reasons the draft Statute gives no wording for what is to be Article 1.

DRAFT STATUTE

Article 1

[For reasons stated in the accompanying Report, the text of Article 1 has been left in blank pending decision by The United Nations Conference at San Francisco.]

* * *

The Committee has proceeded to a revision, article by article, of the Statute of the Permanent Court of International Justice. This revision consisted, on the one hand, in the effecting of certain adaptations of form rendered necessary by the substitution of The United Nations for the League of Nations; on the other hand, in the introduction of certain changes judged desirable and now possible. With regard to this second point, however, the Committee has considered that it was better to postpone certain amendments than to compromise by excessive haste the success of the present project for an International Organization, even though an eminent function pertains to the Court in the world organization which The United Nations intend to construct in such manner that peace for all and the rights of each one may be effectively assured. It has happened many times that this examination has led the Committee to propose retaining such or such Articles of the Statute without change. However, the Committee has deemed it useful to number the paragraphs of each article of the Statute, whether or not other changes were made.

CHAPTER I
Organization of the Court

The Committee has introduced only one modification in Article 2. Despite the respect attaching to the name of The Permanent Court of International Justice, it has eliminated that name from this Article in order not to prejudice in any way the decision which is to be made with regard to Article I: this elimination may be only provisional.

* * *

Article 2.

The Court shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurist consultants of recognized competence in international law.

* * *

Although the proposal has been made to reduce the number of the members of the Court either preserving the general structure thereof, or changing it, the Committee has deemed it preferable to preserve both this structure and the number of judges which in 1929 was made fifteen. It has been pointed out that, thereby, the interest taken in the Court in the different countries would be increased and that the creation of chambers within the Court would be facilitated. A member of the Committee suggested that it would permit the representation of different types of civilization. On the other hand, the Committee has seen fit to establish directly in this Article the rule derived indirectly from another provision and which does not permit a State or Member of The United Nations to have included more than one of its nationals among the members of the Court.

Article 3

The Court shall consist of fifteen members, no two of whom may be nationals of the same State or Member of The United Nations.

* * *

For the election of the judges it is provided, in accordance with what seems to be the spirit of the Dumbarton Oaks Proposals, to have it performed by the General Assembly and the Security Council of The United Nations, leaving to these bodies the task of determining how a State which, while accepting the Statute of the Court, is not a Member of The United Nations, may participate in the election. The method of nomination with a view to this election gave rise to an extensive debate, certain delegations having advocated nomination by the Governments instead of entrusting such nomination to the national groups in the Permanent Court of Arbitration as is established in the present Statute; the continuance of the present régime has been defended as introducing a non-political influence at this point of the procedure for the election of the judges. In the debate, at the moment of the vote, the Committee was divided without a majority being clearly shown. Afterward a compromise suggestion was presented by the Delegate of Turkey; it would have consisted in giving the Government the power of not transmitting the nominations of candidates decided upon by the national group, this disagreement depriving the country concerned of the exercise of the right to nominate candidates for the election in question.

The Committee deemed it fitting to submit two drafts on this point. One, retaining the nomination by the national groups of the Permanent Court of Arbitration, maintained with mere formal improvements Articles 4, 5, and 6 of the Statute; the other modifies those articles in order to provide rules for the nominations of candidates by the Governments.

The procedure to be followed for the designation of candidates by the national groups is retained with no other change than that consisting in specifying that the groups called upon to participate in such designation are the groups belonging to the States which are parties to this Statute.

Article 4	Article 4
(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.	(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated in accordance with Articles 5 and 6.
(2) In the case of Members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members	(2) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly

of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.

Article 5

(1) At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

on the proposal of the Security Council.

Article 5

At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the Governments of Members of the United Nations and of States parties to the present Statute inviting each of them to undertake, within a given time, the nomination of a person of their own nationality in a position to accept the duties of a member of the Court.

Article 6.	Article 6.
Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.	Before making these nominations, each Government is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international acadamies devoted to the study of law

Article 7.

(1) The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12 (2), these shall be the only persons eligible.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9.

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.	Article 10.
(1) Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.	Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.
(2) In the event of more than one national of the same State or Member of the United Nations obtaining an absolute majority of the votes of both the General Assembly and of the Security Council, the oldest of these only shall be considered as elected.	

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

(1) If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

(3) If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the General Assembly or in the Security Council.

(4) In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

* * *

The Committee has felt that the rule subjecting the Court to a complete renewal every nine years presented serious drawbacks, despite the rule of the re-eligibility of the judges, and the practice, widely followed in 1930, of re-election. Hence it proposes to substitute therefor a system of renewal by one-third every three years. However, certain doubts appear to remain regarding the methods of the system, and these might be made the subject of a further examination with a view to determining whether a solution could not be found in some other way which would consist, contrary to what is said in Article 15, in fixing at nine years the duration of the term of any judge, no matter the circumstances under which he is elected.

Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected, provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of The United Nations immediately after the first election has been completed.

(3) The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

* * *

At the close of Article 14, concerning the way in which a place that has become vacant is to be filled, the words "at its next session" have been eliminated, the reason for this being the fact that the Security Council is to be in session permanently.

Article 14.

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

* * *

The Committee has felt that, in the English text of Article 17, par. 2, it is well to eliminate the words "an actove", in order to establish closer conformity with the French text: the latter has not been changed. The same is

Examination of Article 15 has provided an occasion for several delegations to propose an age limit for judges. However, this proposal was not supported by the Committee, which proposes to retain Articles 15 and 16 without changing them: the substitution in the English text of the expression "shall be" for the word "is", and "term of office" for "period of appointment", does not involve any change in the French text.

Article 15.

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16.

(1) No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

(2) Any doubt on this point shall be settled by the decision of the Court.

* * *

The Committee has felt that in the English text of Article 17, (2), there should be eliminated the words "an active" in order to establish more exact conformity with the French text: the latter has not been changed. The same is true of the substitution of the expression "shall be" for the word "is" in the English text of the same article, paragraph (3). On the other hand, no change is made in Article 18 except in paragraph (2), where there is mention of the Secretary-General of The United Nations.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

(3) Any doubt on this point shall be settled by the decision of the Court.

Article 18

(1) No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of The United Nations by the Registrar.

(3) This notification makes the place vacant.

*

The Committee does not propose any change in Article 19 concerning the granting of diplomatic privileges and immunities to members of the Court. However, it points out that, insofar as The United Nations Charter regulates the granting of such privileges and immunities to the representatives of The United Nations and their agents, it will be well to examine the appropriateness and the way of coordinating such regulations.

As to Article 20, it has not appeared to call for any change.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

/Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter./

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

* * *

Par. 2 of Article 21 has given rise to discussion in consequence of the suggestion that has been made to authorize the Court to appoint, if it sees fit, a Secretary-General in addition to the Registrar. Some have appeared to fear this duality, while others would prefer to grant to the Court the power to appoint such officers as it considers necessary; however, it was not desired to require that all officers under it be appointed by it. These various considerations led to the completing of this paragraph by a flexible formula that will authorize the Court either to appoint or to delegate the making of the appointment.

As to paragraph (3), which asserted the compatibility of the function of the Registrar of the Court and those of the Secretary General of the Permanent Court of Arbitration, it appeared superfluous and has been eliminated.

Article 21

(1) The Court shall elect its President and Vice-President for three years; they may be re-elected.

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

***

As the seat of the Court is kept at The Hague, it has appeared proper to add that the Court, when it considers it desirable, may decide to sit at some other place and consequently to exercise its functions there. Article 22 has been completed to that effect.

Article 22

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

(2) The President and Registrar shall reside at the seat of the Court.

***

After having carefully examined Article 23, concerning the leaves which may be granted to the Members of the Court whose homes are far distant from The Hague, the Committee has retained the wording of the old article, but with a paragraph 2 couched in general terms.

It does not propose to modify Articles 24 and 25.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending

by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

(1) If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

(1) The full Court shall sit except when it is expressly provided otherwise.

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

* * *

The Statute of the Permanent Court of International Justice prescribed in its Articles 26 and 27 the establishment, by the Court, of special Chambers for cases relating to labor and for cases relating to transit and communications.

As a matter of fact, these Chambers were indeed established, but they never functioned, and it appears henceforth superfluous to retain the provisions concerning them. But it has appeared advisable to authorize the Court to establish, if necessary, on the one hand, Chambers dealing with particular categories of cases, and the cases relating to labor, transit and communications have been kept as examples in this connection, and on the other hand, at the request of the parties, to establish a special Chamber to deal with a particular case. The Committee has believed that this change might facilitate, under certain circumstances, recourse to that jurisdiction.

Article 26

(1) The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases, for example, labor cases and cases relating to transit and communications.

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

* * *

These Chambers, as well as those which will form the subject of Article 29, will render decisions which will be decisions of the Court as already stated in Article 73 of the Rules of the Court. They may, as provided for by the old Article 28 of the Statute, and as will become the rule for the Court itself, by virtue of the new text of that article, sit elsewhere than at The Hague.

Article 27.

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

* * *

As for the Chamber for summary procedure established by Article 29, it is retained with mere formal amendations of this article. Logically, the latter should be inserted somewhat above; it is left at this place in order not to change the established numbering of the articles.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five

judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

* * *

Article 30 has undergone in Paragraph 1 changes that do not alter the sense which had been given it by the Court. A provision is added thereto authorizing the Court to introduce either for itself or in its Chambers assessors without the right to vote. Provision had formerly been made for assessors in the Chambers; it has been considered advisable to extend it to the Court itself.

Article 30.

(1) The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

* * *

The Committee has examined whether it was not necessary to simplify, by shortening it, the text of Paragraphs 2 and 3 of Article 31 concerning the right of a party to appoint a judge of its nationality. In the end it did not retain this suggestion and made only slight changes in this article: one, in Paragraph 2, consists in saying, in the French text: "toute autre partie" instead of "l'autre partie" and in the English text "any other party" instead of "the other party"; the others, affecting the English text only, substitute, in Paragraphs 3, 5, and 6, for the terms previously employed, better terms corresponding more closely with the terminology already adopted in the French text.

Article 31.

(1) Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to choose a judge as provided in paragraph (2) of this Article.

(4) The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

(6) Judges chosen as laid down in paragraphs (2), (3) and (4) of this Article shall fulfil the conditions required by Articles 2, 17 (2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

* * *

Except for the substitution, in Paragraph 5 of Article 32, of the General Assembly of The United Nations for the Assembly of the League of Nations, and the deletion in the same paragraph of the words "on the proposal of the Council," this Article and Article 33, both concerning the financial system of the Court, are not changed.

Article 32.

(1) Each member of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

(3) The Vice-President shall receive a special allowance for every day on which he acts as President.

(4) The judges appointed under Article 31, other than members of the Court, shall receive indemnities for each day on which they exercise their functions.

(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of the United Nations. They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

Article 33.

The expenses of the Court shall be borne by The United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

Competence Of The Court

Since Article 34 states the rule that only States or Members of The United Nations may be parties to cases before the Court, the Committee has deemed it advisable to add a second paragraph fixing under what conditions information relative to the cases brought before the Court may be requested by the latter from public international organizations or be presented by such organizations on their own initiative. In so doing, the Committee has not wished to go so far as to admit, as certain delegations appear disposed to do, that public international organizations may become parties to a case before the Court. Admitting only that such organizations might, to the extent indicated, furnish information, it has laid down a rule which certain persons have considered as being one of procedure rather than of competence. The Committee, by placing it nevertheless in Article 34, has intended to emphasize its importance.

Article 34.

(1) Only States or Members of The United Nations may be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

* * *

Aside from the purely formal changes necessitated by references to The United Nations Organization instead of to the Covenant of the League of Nations, Article 35 is amended only in that, in the English text of paragraph 2, the word "conditions" is substituted for the word "provisions" and in paragraph 3, the word "case" is substituted for the word "dispute" which will assure better agreement with the French text.

Article 35.

(1) The Court shall be open to the members of The United Nations and also to States parties to the present Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security

Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of The United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

* * *

The question of compulsory jurisdiction was debated at the time of the initial preparation of the Statute of the Court. Although compulsory jurisdiction was included by the Advisory Committee of Jurists, in 1920, it was rejected in the course of the examination of the draft Statute by the League of Nations and was replaced, on the fruitful suggestion of a Brazilian jurist by an optional clause permitting the States to accept in advance the compulsory jurisdiction of the Court in a sphere delimited by Article 36. This debate has been resumed and very many delegations have made known their desire to see the compulsory jurisdiction of the Court affirmed by a clause inserted in the revised Statute so that, as the latter is to become an integral part of The United Nations Charter, the compulsory jurisdiction of the Court would be an element of the International Organization which it is proposed to institute at the San Francisco Conference. Judging from the preferences thus indicated, it does not seem doubtful that the majority of the Committee was in favor of compulsory jurisdiction, but it has been noted that, in spite of this predominant sentiment, it did not seem certain, nor even probable, that all the nations whose participation in the proposed International Organization appears to be necessary, were now in a position to accept the rule of compulsory jurisdiction, and that the Dumbarton Oaks Proposals did not seem to affirm it; some, while retaining their preferences in this respect, thought that the counsel of prudence was not to go beyond the procedure of the optional clause inserted in Article 36, which has opened the way to the progressive adoption, in less than 10 years, of compulsory jurisdiction by many States which in 1920 refused to subscribe to it. Placed on this basis, the problem was found to assume a political character, and the Committee thought that it should defer it to the San Francisco Conference.

The suggestion was made by the Egyptian delegation to seek a provisional solution in a system which while adopting compulsory jurisdiction as the general rule would permit each State to escape it by a reservation. Rather than accept this view, the Committee has preferred to facilitate the consideration of the question by submitting two texts as suggestions rather than as a recommendation.

One is submitted in case the Conference should not intend to affirm in the Statute the compulsory jurisdiction of the Court, but only to open the way for it by offering to the States the possibility of accepting an optional clause on this matter, if they are so disposed. This text reproduces Article 36 of the Statute with an addition in case the United Nations Charter should make some provision for compulsory jurisdiction.

The second text, also based on Article 36 of the Statute, establishes compulsory jurisdiction directly without passing through the channel of an option which each State would be free to take or not take. Thus it is simpler than the preceding one. It has even been pointed out that it would be too simple. The Committee, however, thought that the moment had not yet come to elaborate it further and see whether the compulsory jurisdiction thus established should be accompanied by some reservations, such as one concerning differences belonging to the past, one concerning disputes which have arisen in the present war, or others such as were authorized by the General Act of 1928. If the principle enunciated by this second text were accepted, it could serve as a basis for working out provisions applying that principle with such modifications as might be deemed opportune.

Some delegations desired to see inserted in Article 36 (1) the specification that the jurisdiction of the Court extends to "justiciable" matters or those "of a legal nature" which the parties might submit to it. Objections were made to the insertion of such a specification in a provision covering the case in which the jurisdiction of the Court depends on the agreement of the parties. Some refused to restrict in this way the jurisdiction of the Court. Fears were also expressed regarding difficulties in interpretation which such a provision might cause, whereas practice has not shown any serious difficulties in the application of Article 36 (1). Therefore it was not changed as indicated.

Article 36.

[The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.]

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations

[(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations

or in treaties and conventions in force.	or in treaties and conventions in force.
(2) The Members of The United Nations and the States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:	(2) The Members of The United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory *ipso facto* and without special agreement in any legal dispute concerning:
(a) the interpretation of a treaty;	(a) the interpretation of a treaty; or
(b) any question of international law;	(b) any question of international law; or
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;	(c) the existence of any fact which, if established, would constitute a breach of an international obligation; or
(d) the nature or extent of the reparation to be made for the breach of an international obligation.	(d) the nature or extent of the reparation to be made for the breach of an international obligation.
(3) The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.	
(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.]	(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.]

* * *

In order to adapt the provisions of Article 37 to the new situation, it will be necessary to say that when a treaty or a convention in force contemplates reference to a tribunal to be established by The United Nations, the Court shall be that tribunal. But that will not suffice: it must be added that it is also the Court which continues to constitute or which will constitute the tribunal contemplated by any treaty giving competence to the Permanent Court of International Justice.

The form to be given to this second rule depends on the decision which is made on the question of whether the Court governed by the Statute in preparation is considered as a new Court or as the Court instituted in 1920 and governed by a Statute which, dating from that year, has been revised in 1945 as it was revised in 1929. In order not to prejudge the reply which the San Francisco Conference will have to give apropos of Article 1 and to show that in its 1920 text Article 37 is thought to be insufficient, the Committee has herein recorded, for consideration, the said article as proposed in the American draft.

It should be observed, moreover, that if the Court which will be governed by the present Statute is considered as a continuation of the Court instituted in 1920, the force of law of the numerous general or special international acts affirming the compulsory jurisdiction of this Court will subsist. If, on the contrary, the Court is held to be a new Court, the former one disappearing, it could be argued that the said obligations will run the risk of being considered null and void, their restoration in force will not be easy, and an advance in law will thus be abandoned or seriously endangered.

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations or by The United Nations, the Court shall be such tribunal.

/Subject to reconsideration after the adoption of a text of Article 1./

* * *

Article 38, which determines, according to its terms, what the Court "shall apply" has given rise to more controversies in doctrine than difficulties in practice. The Committee thought that it was not the opportune time to undertake the revision of this article. It has trusted to the Court to put it into operation, and has left it without change other than that which appears in the numbering of the provisions of this article.

Article 38.

(1) The Court shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III

Procedure

The provisions of the Statute concerning the official languages of the Court are modified only to specify, in conformity with practice, that the Court, at the request of a party, shall authorize such party to use another language.

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

(3) The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

* * *

In the other provisions of the Statute relative to procedure, the Committee did not think it should propose important innovations. These provisions, based directly on those of The Hague Conventions, have given satisfaction in practice. In the matter of provisional measures, it considered that the indication of such measures ought to be notified to the Security Council as formerly they had to be to the Council of the League of Nations (Article 41).

It thought it opportune, moreover, to improve the agreement between the two texts of the Statute by changing certain expressions in the English text of Articles 43 (2), 47 (2), 53 (1), and 55 (1) and (2), without its being necessary to change the French text. Articles 40 to 56, accordingly, now read as follows:

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties shall be indicated.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

(2) Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Security Council.

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.

Article 43.

(1) The procedure shall consist of two parts: written and oral.

(2) The written proceedings shall consist of the communications to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

(3) These communications shall be made through the Registrat, in the order and within the time fixed by the Court.

(4) A certified copy of every document produced by one party shall be communicated to the other party.

(5) The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

(1) For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

(2) The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

(1) Minutes shall be made at each hearing, and signed by the Registrar and the President.

(2) These minutes alone shall be authentic.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

(1) Whenever one of the parties does not appear before the Court, or fails to defend his case, the other party may call upon the Court to decide in favor of his claim.

(2) The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

(3) The deliberations of the Court shall take place in private and remain secret.

Article 55.

(1) All questions shall be decided by a majority of the judges present.

(2) In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56.

(1) The judgment shall state the reasons on which it is based.

(2) It shall contain the names of the judges who have taken part in the decision.

* * *

An innovation which, moreover, confirms practice, has been introduced in Article 57 (1) which provides that not only a dissenting judge but any judge, shall have the right to annex to the decision the statement of his individual opinion.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

* * *

Articles 58 to 64 contain no change in the French text; the formal emendations made in the English text of Articles 61 (substitution of "judgment" for "sentence" in paragraph 5) and 62, paragraph 1 (elimination of the words: "as a third party") do not change the sense thereof.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

(1) An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

(2) The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

(3) The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

(4) The application for revision must be made at latest within six months of the discovery of the new fact.

(5) No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62.

(1) Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

(2) It shall be for the Court to decide upon this request.

Article 63.

(1) Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

Advisory Opinions

It is for the Charter of The United Nations to determine what organs of the latter shall be qualified to lay before the Court a request for an advisory opinion. Although this was not stated in the Dumbarton Oaks Proposals, the Committee believed, however, that it might presume that not only the Security Council but also the General Assembly would have this function, and it is on that basis that it has determined how the application should be submitted. The suggestion has been made to allow international organizations and, even to a certain extent, States to ask for advisory opinions; the Commission did not believe that it should adopt it. Aside from that, the changes made in Articles 65 to 68 are purely formal and do not call for any comment.

CHAPTER IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.

(2) The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 66.

(1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of The United Nations, through the Secretary-General of The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

(3) Should any Member of The United Nations or State entitled to appear before the Court have failed to receive the special communication referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4) Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of The United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

Article 68.

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

* * *

It has been suggested that the provisions of the Court Rules (Article 67) concerning appeals brought before the Court be transferred to the Statute. But it has been observed that those provisions have to do with procedure only, and consequently their place is in the Rules. The part played by the Court as an appeal court is governed by the provisions governing its jurisdiction. Consequently, the suggestion mentioned above was not included.

* * *

CHAPTER V

Amendments

The United States Government having proposed the acceptance of a special procedure for amendment of the Statute of the Court, this proposal has appeared suited to fill a regrettable lacuna in the Statute, a lacuna the disadvantage of which has made itself felt in the past. The Committee has changed the United States proposal in order to bring it into conformity with the corresponding provision proposed at Dumbarton Oaks to form part of the Charter of The United Nations. The Committee's proposal is dependent on what is decided at San Francisco regarding the changing of the Charter itself. While deeming its proposal provisional for this reason, the Committee thought that it should draft it, because of the importance which it attaches to a provision of this nature.

Article 69

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of the United Nations having permanent membership on the Security Council and by a majority of the other parties to the Statute.

[The above text of Article 69 was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed.]

* * *

A Member of the Committee called its attention to the importance which exact execution of the decisions of the Court has for the reign of law and the maintenance of peace, and he wondered whether the Statute ought not to contain a provision concerning the proper means for assuring this effect. The importance of this suggestion was not contested, but the remark was made that it was not the business of the Court itself to ensure the execution of its decisions, that the matter concerns rather the Security Council, and that Article 13 paragraph 4, of the Covenant had referred in this connection to the Council of the League of Nations. A provision of this nature should consequently appear in the Statute, but the attention of the San Francisco Conference should not be called to the great importance connected with formulating rules on this point in the Charter of The United Nations.

* * *

In drafting the above texts, the Committee has been careful to respect the distribution of subject matter and the numbering of articles just as they occur in the Statute of the Permanent Court of International Justice. It has felt that in so doing it would facilitate scientific work and the utilization of jurisprudence.

* * *

The Committee has not disregarded the fact that among The United Nations there are many which are parties to the Statute of the Court drawn up in 1920 and revised in 1929, and that on that account they are bound not only to one another, but also with respect to States which do not appear among The United Nations. Hence the obligation for the former of adjusting the situation arising between them and those States for that reason. That adjustment was not within the province of the Committee: it did not undertake to prejudge it. It should be also borne in mind that in building up an institution of international justice the regular channels must be followed with special strictness.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED
Jurist 87
G/74
April 25, 1945

RAPPORT

PROJET DE
STATUT D'UNE COUR INTERNATIONALE DE JUSTICE
VISEE AU CHAPITRE VII DES PROPOSITIONS DE DUMBARTON OAKS

(Professor Jules Basdevant, Rapporteur)

PROPOSE PAR LE
COMITE DE JURISTES DES NATIONS UNIES
A LA
CONFERENCE DES NATIONS UNIES
POUR L'ORGANISATION INTERNATIONALE
A SAN FRANCISCO

(San Francisco le 25 Avril 1945)

Le présent rapport est un texte revu et corrigé du Document No. 62 (Revu) qui a été distribue a Washington le 20 Avril 1945.

Le projet de Dumbarton Oaks ayant prévu que l'Organisation internationale des Nations Unies devrait comporter, parmit ses organes principaux, une Cour internationale de Justice, une Commission de juristes désignés par les Nations Unies s'est réunie à Washington à l'effet de préparer et de soumettre à la Conférence de San Francisco un projet de Statut de cette Cour. Le présent rapport a pour objet de présenter le résultat des travaux de cette Commission. Il ne saurait préjuger en quoi que ce soit les décisions de la Conférence: les juristes qui l'ont élaboré ont, en le faisant, agi en tant que juristes sans engager les Gouvernements dont ils relèvent.

Le projet de Dumbarton Oaks a prévu que la Cour serait l'organe judiciaire principal des Nations Unies, que son Statut, annexé à la Charte de celle-ci, en serait partie intégrante et que tous les membres de l'Organisation internationale devraient être ipso facto parties au Statut de la Cour. Il n'a point déterminé si ladite Cour serait la Cour permanente de Justice Internationale dont le statut serait maintenu avec des amendements ou si ce serait une Cour nouvelle dont le Statut serait d'ailleurs élaboré sur la base du Statut de la Cour existante. Dans la préparation de son projet, la Commission a adopté la première méthode et il a été rappelé devant elle que la Cour permanente de Justice internationale avait fonctionné pendant vingt ans à la satisfaction des plaideurs et que, si la violence aviat suspendu son activité, du moins cette institution n'avait pas failli à sa tâche.

Cependant la Commission a estimé qu'il appartenait a la Conférence de San Francisco : I) de déterminer en quelle forme sera énoncée la mission de la Cour d'être l'organe judiciaire principal des Nations Unies, 2) d'apprécier s'il y a lieu de rappeler, à ce propos, l'existence actuelle ou éventuelle d'autres tribunaux internationaux, 3) de considérer la Cour comme une Cour nouvelle ou comme le maintien de la Cour instituée en 1920 et dont le Statut, révisé une première fois en 1929, se trouvera révisé à nouveau en 1945. Ces questions ne sont pas de pure forme; la dernière, en particulier, affecte l'effet de nombreux traités contenant référence à la juridiction de la Cour permanente de Justice internationale.

Pour ces motifs le projet de Statut n'énonce aucune rédaction pour ce que doit être l'article Ier de celui-ci.

PROJET DE STATUT.

Article 1.

[Pour les raisons indiquées dans le rapport ci-joint, le texte de cet article a été laissé en blanc, en attendant la décision de la Conférence des Nations Unies à San Francisco.]

* * *

La Commission a procédé à une revision, article par article, du Statut de la Cour permanente de Justice internationale. Cette revision a consisté, d'une part, à effectuer certaines adaptations de forme rendues nécessaires par la substitution des Nations Unies à la Société des Nations, d'autre part, à introduire certaines modifications jugées désirables et actuellement possibles. Sur ce second point d'ailleurs, la Commission a estimé que mieux valait ajourner certains amendements que compromettre par trop de hâte le succès de l'entreprise actuelle d'Organisation internationale, cela en considération même de la fonction éminente revenant à la Cour dans une organisation du monde que les Nations Unies entendent construire de telle façon que la paix pour tous et les droits de chacun soient effectivement assurés. Il est arrivé maintes fois que cet examen ait conduit la Commission à proposer le maintien de tels et tels articles du Statut sans modification. Cependant la Commission a estimé utile de numéroter les paragraphes de chaque article, modifié ou non, du Statut.

CHAPITRE I

ORGANISATION DE LA COUR.

La Commission a introduit une seule modification a l'article 2. Malgré le respect qui s'attache au nom de la Cour permanente de Justice internationale, elle a supprimé ce nom de cet article afin de ne préjuger en rien la décision qui sera prise au sujet de l'article 1er : cette suppression peut n'être que provisoire.

Article 2.

La Cour est un corps de magistrats indépendants, élus, sans égard à leur nationalité, parmi les personnes jouissant de la plus haute considération morale, et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions judiciaires, ou qui sont des jurisconsultes possédant une compétence notoire en matière de droit international.

* * *

Bien que la proposition ait été faite de réduire le nombre des membres de la Cour soit en maintenant la structure générale de celle-ci, soit en la modifiant, la Commission a estimé préférable de maintenir et cette structure et le nombre de juges porté à quinze en 1929. Il a été indiqué que, par là, l'intérêt porté à la Cour dans les différents pays serait accru et que la création de Chambres au sein de la Cour serait facilitée. Un membre de la Commission a suggéré que cela permettrait la représentation de différents types de civilisation. D'autre part, la Commission a estimé qu'il convenait de fixer directement dans cet article la règle découlant indirectement d'une autre disposition et qui ne permet pas à un Etat ou Membre des Nations Unies de compter plus d'un de ses ressortissants parmi les membres de la Cour.

Article 3.

La Cour se compose de quinze membres. Elle ne pourra comprendre plus d'un ressortissant du même Etat ou Membre des Nations Unies.

Pour l'élection des Juges, il est prévu, conformément à ce qui paraît être l'esprit du projet de Dumbarton Oaks, d'y faire procéder par l'Assemblée Générale des Nations Unies et le Conseil de Sécurité, en laissant à ceux-ci le soin de régler comment un Etat qui, tout en ayant accepté le Statut de la Cour, ne serait pas Membre des Nations Unies pourra participer à l'élection. Le mode de présentation des candidatures en vue de cette élection a donné lieu à un ample débat, certaines Délégations ayant préconisé la présentation des candidatures par les Gouvernements au lieu de confier cette désignation aux Groupes Nationaux de la Cour permanente d'Arbitrage ainsi que l'a établi le Statut actuel : le maintien du régime actuel a été défendu comme introduisant une influence non politique à ce moment de la procédure tendant au choix des Juges. Dans le débat, la Commission s'est, au moment du vote, divisée sans qu'une majorité se fût dégagée. Après coup une suggestion transactionnelle a été présentée par le délégué de la Turquie: elle aurait consisté à donner au Gouvernement la faculté de ne pas transmettre les présentations de candidats arrêtées par le groupe national, ce désaccord privant le pays considéré de l'exercice, pour l'élection en cause, du droit de présenter des candidats.

La Commission a jugé à propos de présenter sur ce point deux rédactions. L'une, maintenant la présentation par les groupes nationaux de la Cour permanente d'Arbitrage, conserve, avec de simples retouches de forme, les articles 4, 5 et 6 du Statut; l'autre les modifie afin de régler la présentation des candidatures par les gouvernements.

Article 4.	Article 4.
(1) Les Membres de la Cour sont élus par l'Assemblée Générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées par les Groupes Nationaux de la Cour permanente d'arbitrage; conformément aux dispositions suivantes.	(1) Les Membres de la Cour sont élus par l'Assemblée générale et par le Conseil de Sécurité des Nations Unies sur une liste de personnes présentées conformément aux articles 5 et 6.
(2) En ce qui concerne les Membres des Nations Unies qui ne sont pas représentés à la Cour permanente d'arbitrage les listes de candidats seront présentées par des Groupes Nationaux, désignés à cet effet par leurs Gouvernements, dans les mêmes conditions que celles stipulées pour les Membres de la Cour d'arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.	
(3) En l'absence d'un accord spécial, l'Assemblée Générale sur la proposition du Conseil de Sécurité, règlera les conditions auxquelles peut participer à l'élection des Membres de la Cour, un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre des Nations Unies.	(2) En l'absence d'accord spécial, l'Assemblée générale, sur la proposition du Conseil de Sécurité, règlera les conditions auxquelles peut participer à l'élection des Membres de la Cour un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre des Nations Unies.
Article 5.	Article 5.
(1) Trois mois au moins avant la date de l'élection, le Secrétaire Général des Nations Unies invite par écrit Membres de la Cour Permanente	Trois mois au moins avant la date de l'élection, le Secrétaire général des Nations Unies invite par écrit les Gouvernements des Nations Unies et des

d'arbitrage ainsi que les Membres des Groupes Nationaux désignés conformément au paragraphe 2 de l'article 4, à procéder dans un délai déterminé par les Groupes Nationaux à la présentation de personnes en situation de remplir les fonctions de Membre de la Cour.

(2) Chaque groupe ne peut en aucun cas présenter plus de quatre personnes dont deux au plus de sa nationalité. En aucun cas, il ne peut être présenté un nombre de candidats plus élevé que le double des places à remplir.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque groupe national de consulter la plus haute cour de justice, les facultés et écloes de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

Etats parties au présent Statut à procéder, dans un délai déterminé, à la présentation d'une personne de sa nationalité en situation de remplir les fonctions de membre de la Cour.

Article 6.

Avant de procéder à cette désignation, il est recommandé à chaque gouvernement de consulter la plus haute cour de justice, les facultés et écoles de droit, les académies nationales et les sections nationales d'académies internationales, vouées à l'étude du droit.

* * *

Les articles suivants concernant la procédure de l'élection n'ont subi que les modifications de forme rendues indispensables par la référence aux organes des Nations Unies ou, dans le texte anglais des articles 7, 9, et 12, pour assurer une plus exacte concordance avec le texte français.

Article 7.

Le Secrétaire général des Nations Unies dresse, par ordre alphabétique, une liste de toutes les personnes ainsi désignées; seules ces personnes sont éligibles, sauf le cas prévu à l'article 12, paragraphe 2.

Le Secrétaire général communique cette liste à l'Assemblée Générale et au Conseil de sécurité.

Article 8.

L'Assemblée générale et le Conseil de Sécurité procèdent indépendamment l'un de l'autre à l'élection des membres de la Cour.

Article 9.

Dans toute élection, les électeurs auront en vue que les personnes appelées à faire partie de la Cour, non seulement réunissent individuellement les conditions requises, mais assurent dans l'ensemble la représentation des grandes formes de civilisation et des principaux systèmes juridiques du monde

Article 10.	Article 10
(1) Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée générale et dans le Conseil de Sécurité. (2) Au cas où le double scrutin de l'Assemblée générale et du Conseil de Sécurité se porterait sur plus d'un ressortissant du même Etat ou Membre des Nations Unies, le plus âgé est seul élu.	Sont élus ceux qui ont réuni la majorité absolue des voix dans l'Assemblée générale et dans le Conseil de Sécurité.

Article 11.

Si, après la première séance d'élection il reste encore des sièges à pourvoir, il est procédé, de la même manière, à une seconde et, s'il est nécessaire, à une troisième.

Article 12.

(1) Si, après la troisième séance d'élection, il reste encore des sièges à pourvoir, il peut être à tout moment formé sur la demande, soit de l'Assemblée générale, soit du Conseil de Sécurité, une Commission médiatrice de six membres, nommés trois par l'Assemblée générale, trois par le Conseil de Sécurité, en vue de choisir pour chaque siège non pourvu un nom à présenter à l'adoption séparée de l'Assemblée générale et du Conseil de Sécurité.

(2) Peuvent être portées sur cette liste, à l'unanimité, toutes personnes satisfaisant aux conditions requises, alors même qu'elles n'auraient pas figuré sur la liste de présentation visée à l'article 7.

(3) Si la Commission médiatrice constate qu'elle ne peut réussir à assurer l'élection, les membres de la Cour déjà nommés pourvoient aux sièges vacants, dans un délai à fixer par le Conseil de Sécurité, en choisissant parmi les personnes qui ont obtenu des suffrages soit dans l'Assemblée générale, soit dans le Conseil de Sécurité.

(4) Si parmi les Juges il y a partage égal des voix, la voix du Juge le plus âgé l'emporte.

* * *

La Commission a estimé que la régle soumettant tous les neuf ans la Cour à un renouvellement intégral présentait, malgré la régle de rééligibilité des Juges et la pratique, largement suivie en 1930 de la réélection, de sérieux inconvénients. Elle propose donc d'y substituer un systéme de renouvellement par tiers tous les trois ans. Cependant certains doutes paraissent subsister sur les modalités du systéme et celle-ci ne pourraient faire l'objet d'un examen nouveau en vue de rechercher si une solution ne pourrait pas être trouvée dans une voie différente qui consisterait, contrairement à ce que dit l'article 15, à fixer à neuf ans la durée des pouvoirs de tout juge en quelque circonstance qu'il soit élu.

Article 13.

(1) Les membres de la Cour sont élus pour neuf ans ils sonta rééligibles; toutefois, en ce qui concerne les juges nommés à la première élection de la Cour, les fonctions de cinq juges prendront fin au bout de trois ans, et celles de cinq autres juges prendront fin au bout de six ans.

(2) Les Juges dont les fonctions prendront fin au terme des périodes initiales de trois et six ans mentionnées, ci-dens seront désignés par tirage au sort effectué par le Secrétaire Général des Nations Unies, immédiatement après qu'il aura été procédé à la première élection.

(3) Les Membres de la Cour restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

(4) En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire Général des Nations Unies. Cette derniére notification emporte vacance du siége.

* * *

A la fin de l'article 14 concernant la maniére dont il sera pourvu à un siége devenu vacant, ont été supprimés les mots "dans sa premiére session", suppression motivée par le fait que le Conseil de sécurité est prévu comme devant être en session permanente.

Article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après : dans le mois qui suivra la vacance, le Secrétaire Général des Nations Unies procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil de sécurité.

* * *

L'examen de l'article 15 a fourni l'occasion à plusieurs Délégations de proposer une limite d'âge pour les juges. Cette proposition n'a cependant pas été retenue par la Commission qui propose de maintenir sans les modifier les articles 15 et 16: la substitution dans le texte anglais de l'expression "shall be" au mot "is" et celle n'entrainent des mots "term of office" aux mots "period of appointment", aucun changement du texte francais.

Article 15.

Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Article 16.

(1) Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

(2) En cas de doute, la Cour décide.

* * *

La Commission a estimé que, dans le texte anglais de l'article 17, par. 2, il y a lieu de supprimer les mots "an active" afin d'établir une conformité plus exacte avac le texte français: celui-ci n'a pas à être modifié. Il en est de même de la substitution de l'expression "shall be" au mot "is" dans le texte anglais de ce même article paragraphe 3. Aucune modification n'est, d'autre part, apportée a l'art. 18, sinon au paragraphe 2, celle qui découle de la mention du Secrétaire général des Nations Unies.

Article 17.

(1) Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

(2) Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

(3) En cas de doute, la Cour décide.

Article 18.

(1) Les membres de la Cour ne peuvent être relevés de leurs fonctions que si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises.

(2) Le Secrétaire général des Nations Unies en est officiellement informé par le Greffier.

(3) Cette communication emporte vacance de siège.

* * *

La Commission ne propose aucune modification à l'article 19 concernant l'octroi aux Membres de la Cour des privilèges et immunités diplomatiques. Toutefois elle signale que, dans la mesure où la Charte des Nations Unies aura réglé l'octroi de semblables privilèges et immunités aux représentants des Nations Unies et à leurs agents, il y aura lieu d'examiner l'opportunité et la manière de coordonner les dispositions de cet ordre.

Quant à l'article 20, il n'a paru appeler aucune modification.

Article 19.

Les membres de la Cour jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques.

[Sous réserve d'examen après que des dispositions à ce sujet auront été adoptées pour inclusion dans la Charte.]

Article 20.

Tout membre de la Cour doit, avant d'entrer en fonction, en séance publique, prendre engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

* * *

Le paragraphe 2 de l'article 21 a donné lieu à discussion par suite de la suggestion qui a été faite d'autoriser la Cour à nommer, si elle le juge à propos, un Secrétaire général à côté du Greffier. Certains ont paru redouter ce dualisme tandis que d'autres préféraient reconnaître à la Cour le pouvoir de nommer tels fonctionnaires dont elle estimerait avoir besoin; toutefois, on n'a pas voulu imposer que tous les fonctionnaires dépendant d'elle fussent nommés par elle. Ces considérations diverses ont conduit à compléter ce paragraphe par une formule souple qui autorisera la Cour soit à nommer soit à charger tel autre d'effectuer la nomination

Quant au paragraphe 3 qui prenait soin d'affirmer la compatibilité entre les fonctions de Greffier de la Cour et celles de Secrétaire général de la Cour permanente d'Arbitrage, il a paru superlu . et il a été supprimé.

Article 21.

(1) La Cour élit, pour trois ans, son Président et son Vice-Président; ils sont rééligibles.

(2) Elle nomme son Greffier et peut pourvoir à la nomination de tels autres fonctionnaires qui seraient nécessaires.

* * *

Le siège de la Cour étant maintenu à La Haye, il a paru convenable d'ajouter que la Cour, lorsqu'elle le jugerait désirable, pourrait décider de siéger en un autre lieu et d'y exercer, par suite, ses fonctions: L'article 22 a été complété à cet effet.

Article 22.

(1) Le siège de la Cour est fixé à La Haye. Ceci, toutefois, n'empêchera pas la Cour de siéger et d'exercer ses fonctions ailleurs lorsqu'elle le jugera désirable.

(2) Le Président et le Greffier résident au siège de la Cour.

* * *

Après avoir examiné avec soin l'article 23 concernant les congés qui peuvent être accordés aux membres de la Cour dont les foyers sont très éloignés de La Haye, la Commission a retenu la rédaction de l'ancien article mais avec un paragraphe 2 conçu en termes généraux.

Elle ne propose pas de modifier les articles 24 et 25.

Article 23.

(1) La Cour reste toujours en fonctions, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

(2) Les membres de la Cour ont droit à des congés périodiques dont la date et la durée seront fixées par la Cour, en tenant compte de la distance qui sépare La Haye de leurs foyers.

(3) Les membres de la Cour seront tenus, à moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Article 24.

(1) Si, pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

(2) Si le Président estime qu'un des membres de la Cour ne doit pas, pour une raison spéciale, siéger dans une affaire déterminée, il en avertit celui-ci

(3) Si, en pareils cas, le membre de la Cour et le Président sont en désaccord, la Cour décide.

Article 25.

(1) Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

(2) Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

(3) Toutefois le quorum de neuf est suffisant pour constituer la Cour.

* * *

Le Statut de la Cour permanente de Justice internationale a prescrit dans ses articles 26 et 27 l'institution, par la Cour, de Chambres spéciales pour les affaires concernant le travail et pour les affaires concernant le transit et les communications.

En fait ces Chambres ont bien été instituées, mais elles n'ont jamais fonctionné et il paraît dès lors superflu de maintenir les dispositions qui les concernent. Mais il a paru utile d'autoriser la Cour à constituer, s'il y a lieu, d'une part, des Chambres chargées de connaître de certaines catégories d'affaires et l'on a repris, à cet égard, l'exemple des affaires en matière de travail, de transit et de communications, et d'autre part, de constituer lorsque les parties le demanderont une Chambre spéciale pour connaître d'une affaire déterminée. La Commission a pensé que cette innovation pouvait faciliter, en certaines circonstances, le recours à cette juridiction.

Article 26.

(1) La Cour peut, à toute époque constituer une ou plusieurs Chambres composées de 3 juges au moins selon ce qu'elle décidera, pour connaître de catégories déterminées d'affaires, par exemple d'affaires de travail et d'affaires concernant le transit et les communications.

(2) La Cour peut, à toute époque constituer une Chambre pour connaître d'une affaire déterminée. Le nombre des juges de cette chambre sera fixé par la Cour avec l'assentiment des parties.

(3) Les chambres prévues au présent article statueront, si les parties le demandent.

* * *

Ces Chambres, ainsi que celle qui fera l'objet de l'article 29, rendront des décisions qui seront des décisions de la Cour comme l'avait dit déjà l'article 73 du Règlement de la Cour. Elles pourront comme l'avait prévu l'ancien article 28 du Statut et comme cela deviendra la règle pour la Cour elle-même, en vertu du nouvel article, siéger ailleurs qu'à La Haye.

Article 27.

Tout arrêt rendu par l'une des chambres prévues aux articles 26 et 29 sera un arrêt de la Cour

Article 28.

Les chambres prévues aux articles 26 et 29 peuvent, avec le consentement des parties, siéger et exercer leurs fonctions ailleurs qu'a La Haye.

* * *

Quant à la Chambre de procédure sommaire instituée par l'article 29, elle est maintenue avec de simples rectifications de forme de cet article. Logiquement, celui-ci devrait prendre place un peu plus haut: il est laissé à cette place pour ne pas modifier le numérotage établi.

Article 29.

En vue de la prompte expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelée à statuer en procédure sommaire lorsque les parties le demandent. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l' impossibilité de siéger.

* * *

L'article 30 subit dans son paragraphe 1er des modifications qui n'altérent pas le sens que lui avait reconnu la Cour. Il y est ajouté une disposition autorisant la Cour à instituer soit pour elle-même soit dans ses Chambres des assesseurs n'ayant pas le droit de vote. L'institution des assesseurs était antérieurement prévue pour les Chambres: on a jugé utile d'en proposer l'extension à la Cour elle-même.

Article 30.

(1) La Cour détermine par un règlement le mode suivant lequel elle exerce ses attributions. Elle règle notamment sa procédure.

(2) Le réglement de la Cour peut prévoir des assesseurs siégeant à la Cour ou dans ses chambres, sans droit de vote.

* * *

La Commission a examiné s'il n'y avait pas lieu de simplifier, en la réduisant, la rédaction des paragraphes 2 et 3 de l'article 31 concernant la faculté pour une partie de nommer un juge national. Finalement elle n'a pas retenu cette suggestion et n'a apporté à cet article que de faibles modifications. l'une, au paragraphe 2, consiste à dire, dans le texte français: "toute autre partie" au lieu de "l'autre partie" et dans le texte anglais "any other party" au lieu de "the other party"; les autres, affectant seulement le texte anglais substituent dans les paragraphes 3, 5 et 6, aux termes antérieurement employés des termes meilleurs et correspondant mieux à la terminologie déjà adoptée dans le texte français.

Article 31.

(1) Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

(2) Si la Cour compte sur le siège un juge de la nationalité d'une des parties, toute autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

(3) Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent

(4) Le présent article s'applique dans le cas des articles 26 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

(5) Lorsque plusieurs parties font cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

(6) Les juges désignés, comme il est dit aux paragraphes 2, 3 et 4 du présent article, doivent satisfaire aux prescriptions des articles 2, 17, paragraph 2, 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

* * *

Sauf, dans le paragraphe 5 de l'article 32 la substitution, de l'Assemblée générale des Nations Unies à l'Assemblée de la Société des Nations, et la suppression des mots "sur la proposition du Conseil," cet article et l'article 33 concernant l'un et l'autre le régime financier de la Cour ne sont pas modifiés.

Article 32.

(1) Les membres de la Cour reçoivent un traitement annuel.

(2) Le Président reçoit une allocation annuelle spéciale.

(3) Le Vice-Président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

(4) Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

(5) Ces traitements, allocations et indemnités sont fixés par l'Assemblée générale des Nations Unies. Ils ne peuvent être diminués pendant la durée des fonctions.

(6) Le traitement du Greffier est fixé par l'Assemblée générale sur la proposition de la Cour.

(7) Un règlement adopté par l'Assemblée générale fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

(8) Les traitements, indemnités et allocations sont exempts de tout impôt.

Article 33.

Les frais de la Cour sont supportés par les Nations Unies de la manière que l'Assemblée générale décide.

CHAPITRE II

Compétence de la Cour

L'article 34 énonçant la règle que seuls les Etats ou les Membres des Nations Unies sont justiciables de la Cour, la Commission a jugé utile d'ajouter un second alinéa déterminant dans quelles conditions des renseignements relatifs aux affaires portées devant la Cour pourront être demandés par celle-ci à des organisations internationales publiques ou être présentés spontanément par ces organisations. Ce faisant, la Commission n'a pas voulu aller jusqu'à admettre, comme certaines délégations y paraissaient disposées, que des organisations internationales publiques pussent devenir parties en cause devant la Cour. Admettant seulement que ces organisations pourraient, dans la mesure indiquée, fournir des renseignements, elle a posé une règle que certains ont considérée comme étant de procédure plutôt que de compétence. La Commission, en la plaçant néanmoins à l'article 34, a entendu en marquer l'importance.

Article 34.

(1) Seuls les Etats ou les Membres de Nations Unies ont qualité pour se présenter devant la Cour.

(2) La Cour, dans les conditions prescrites par son Réglement, pourra demander aux organisations internationales publiques des renseignements relatifs aux affaires portées devant elle, et recevra également les dits renseignements qui lui seraient présentés par ces organisations sur leur propre initiative.

* * *

En dehors des modifications de pure forme nécessitées par la référence à l'organisation des Nations Unies et non plus au Pacte de la Société des Nations, l'article 35 est rectifié seulement en ce que, dans le texte anglais du paragraphe (2) le mot "conditions" est substitué au mot "provisions", et dans le paragrphe 3, le mot "case" est substitué au mot "dispute" ce qui assurera une meilleure concordance avec le texte français.

Article 35.

(1) La Cour est ouverte aux Membres des Nations Unies ainsi qu'aux Etats parties au présent Statut.

(2) Les conditions auxquelles elle est ouverte aux

autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil de Sécurité, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

(3) Lorsqu'un Etat, qui n'est pas membre des Nations Unies, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois, cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

* * *

La question de la juridiction obligatoire a éte débattue dès la préparation initiale du Statut de la Cour. Admise par le Comité consultatif de Juristes, en 1920, la juridiction obligatoire a été écartée au cours de l'examen du projet de Statut par la Société des Nations pour faire place, sur l'initiative fructueuse d'un jurisconsulte brésilien, à une clause facultative permettant aux Etats d'accepter par avance la juridiction obligatoire de la Cour dans un domaine délimité par l'article 36. Ce débat a éte repris et de très nombreuses délégations ont fait connaître leur désir de voir consacrer la juridiction obligatoire de la Cour par une clause insérée dans le Statut révisé en sorte que, celui-ci devant devenir partie intégrante de la Charte des Nations Unies, la juridiction obligatoire de la Cour serait un élément de l'organisation internationale qu'on se propose d'instituer à la Conférence de San Francisco. A s'en tenir aux préférences ainsi marquées, il ne parait pas douteux que la majorité de la Commission était en faveur de la juridiction obligatoire. Mais il a éte relevé que, malgré ce sentiment prédominant, il ne paraissait pas certain, ni même probable que toutes les Nations dont la participation à l'organisation internationale projetée apparait comme nécessaire, fussent dès maintenant en situation d'accepter la règle de la juridiction obligatoire et que le projet de Dumbarton Oaks ne paraissait pas la consacrer; certains, tout en conservant leurs préférences à cet égard, ont estimé que la prudence conseillait de ne pas dépasser le procédé de la clause facultative insérée dans l'article 36 et qui a ouvert la voie à l'adoption progressive, en moins de dix ans, de la juridiction obligatoire par de nombreux Etats qui, en 1920, se refusaient à y souscrire. Placé sur ce terrain, le problème s'est trouvé revêtir un caractère politique et la Commission a estimé qu'elle devait le déférer à la conférence de San Francisco.

La suggestion a été faite par la Délégation égyptienne de chercher une solution transactionnelle dans un système qui, posant la règle de la juridiction obligatoire, permittrait à chaque Etat de l'écarter par une réserve. Plutôt que d'entrer dans cette voie, la Commission a préféré faciliter l'examen de la question en présentant deux textes pour mémoires plutôt qu'à titre de propositions.

L'un est présenté pour le cas où la Conférence n'entendrait pas consacrer dans le Statut la compétence obligatoire de la Cour mais seulement ouvrir la voie à celle-ci en offrant aux Etats d'accepter, s'ils le jugent à propos, une clause facultative à ce sujet. Ce texte reproduit l'article 36 du Statut avec une addition pour le cas où la Charte des Nations Unies viendrait à faire quelque place à la juridiction obligatoire.

Le second texte, s'inspirant aussi de l'article 36 du Statut, établit directement la juridiction obligatoire sans passer par la voie d'une option que chaque Etat serait libre de faire ou de ne pas faire. Aussi est-il plus simple que le précédent. On a même relevé qu'il serait trop simple. La Commission a cependant pensé que le moment n'était pas encore venu de l'élaborer davantage et de rechercher si la juridiction obligatoire ainsi établie devrait s'accompagner de quelques réserves, telles que celle des différends appartenant au passé, celle des contestations nées au cours de la présente guerre, ou celles autorisées par l'Acte général d'Arbitrage de 1928. Si le principe qu'énonce ce second texte était admis, celui-ci pourrait servir de base pour élaborer telles dispositions mettant en appliation le principe qu'il énonce avec les aménagements qui pourraient être jugés opportuns.

Certaines délégations avaient le désir de voir insérer dans l'article 36, paragraphe 1, la précision que la compétence de la Cour s'étend aux affaires "justiciables", ou "d'ordre juridique", ou "of legal nature", que les parties lui soumettront. Des objections ont été faites à l'insertion d'un telle précision dans une disposition visant le cas où l'accord des parties, saisit la Cour. Certains se sont refusés à restreindre ainsi la compétence de la Cour. Des craintes se sont aussi élevées au sujet des difficultés d'interprétation que ferait naître une telle disposition alors que la pratique n'a pas révélé de sérieuses difficultés pour l'application de l'article 36, paragraphe 1. Aussi n'a-t'il pas été modifié dans le sens indiqué.

Article 36.

[La Commission soumet ci-dessous deux textes pour le présent Article, l'opinion des membres de la Commission étant divisée quant au choix de l'un ou de l'autre.]

[(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations ou dans les traités et conventions en vigueur.	[(1) La compétence de la Cour s'étend à toutes les affaires que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies ou dans les traités et conventions en vigueur.
(2) Les membres des Nations Unies et Etats parties au présent Statut pourront, à n'importe quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou Etat acceptant la même obligation, la juridiction de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:	(2) Les Membres des Nations Unies et Etats parties au présent Statut reconnaissent entre eux comme obligatoire de plein droit et sans convention spéciale, la juridiction de la Cour sur tout différend d'ordre juridique ayant pour objet:
(a) l'interprétation d'un traité;	(a) l'inperprétation d'un traité;

(b) tout point de droit international;

(c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international;

(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

(3) La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

(4) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

(b) tout point de droit international;

(c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international;

(d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

(3) En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.]

Pour adapter à la situation nouvelle les dispositions de l'article 37, il sera nécessaire de dire que lorsqu'un traité ou une convention en vigueur vise le renvoi à une juridiction à établir par les Nations Unies, la Cour sera cette juridiction. Mais cela ne suffira pas: il faudra ajouter que c'est également cette Cour qui continue à constituer ou qui constituera la juridiction visée par tout traité donnant compétence à la Cour permanente de Justice internationale.

La forme à donner à cette seconde règle dépend du parti qui sera pris sur le point de savoir si la Cour régie par le Statut en voie d'élaboration sera considérée comme une Cour nouvelle ou la Cour instituée en 1920 et régie par un Statut qui datant d'alors, aura été revisé en 1945 comme il l'a été en 1929. Afin de ne pas préjuger la réponse que la Conférence de San Francisco aura à donner à propos de l'article Ier et pour marquer qu'en sa rédaction de 1920, l'article 37 serait insuffisant, la Commission a ici inscrit, pour mémoire, ledit article tel qu'il a été proposé dans le projet américain.

Il y a lieu de remarquer, d'ailleurs, que si la Cour qui sera régie par le présent Statut est considérée comme continuant à être la Cour instituée en 1920, la force de droit des nombreux actes internationaux généraux ou spéciaux, consacrant la juridiction obligatoire de cette Cour, subsistera. Que si, au contraire, la Cour est tenue pour une Cour nouvelle, l'ancienne disparaissant, lesdits engagements risqueront d'être considérés comme caducs, leur remise en vigueur sera malaisée, un progrès du droit se trouvera ainsi abandonné ou gravement compromis.

Article 37.

Lorsqu'un traité ou une convention en vigueur vise le renvoi à une juridiction à établir par la Société des Nations ou les Nations Unies, la Cour constituera cette juridiction.

[Sous réserve d'examen après adoption du texte de l'article 1.]

* * *

L'article 38 qui détermine, selon ses termes, ce que la Cour "applique" a suscité plus de controverses dans la doctrine que de difficultés dans la pratique. La Commission a estimé qu'il ne serait pas opportun d'entreprendre la revision de cet article. Pour sa mise en oeuvre, elle a fait confiance à la Cour et elle l'a laissé sans autre changement que celui qui apparaît dans le numérotage des dispositions de cet article.

Article 38.

(1) - La Cour applique:

(a) les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige;

(b) la coutume internationale comme preuve d'une pratique générale accepté comme étant le droit;

(c) les principes généraux de droit reconnus par les nations civilisées;

(d) sous reserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifies des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

(2) La présente disposition ne porte pas atteinte à la faculté pour la Cour, si les parties sont d'accord, de statuer ex aequo et bono.

CHAPITRE III

Procedure

Les dispositions du Statut concernant les langues officielles de la Cour ne sont modifiées que pour préciser, conformément à la pratique, que la Cour, à la pratique, que la Cour, à la demande d'une partie, autorisera celle-ci à se servir d'une autre langue.

Article 39.

(1) Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

(2) A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

(3) La Cour, à la demande de toute partie, autorisera l'emploi, par cette partie, d'une langue autre que le français ou l'anglais.

Dans les autres dispositions du Statut relatives à la procédure, la Commission n'a pas cru devoir proposer d'innovations importantes. Ces dispositions directement inspirées de celles des Conventions de La Haye ont donné satisfaction dans la pratique. En matière de mesures conservatoires, elle a estimé que l'indication de ces mesures devrait être notifiée au Conseil de Sécurité comme elles devaient l'être auparavant au Conseil de la Société des Nations (article 41).

Elle a jugé à propos, d'autre part, d'améliorer la concordance entre les deux textes du Statut en modifiant quelques expressions dans le texte anglais des articles 43, paragraphe (2), 47, paragraphe (2), 53, paragraphe (1), et 55, paragraphe (1) et (2), sans qu'il y ait eu à modifier le texte français. Les articles 40 à 56 se présentent, en conséquence, comme suit:

Article 40.

(1) Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une

requête, adressées au Greffier; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

(2) Le Greffier donne immédiatement communication de la requête à tous intéressés.

(3) Il en informe également les Membres des Nations Unies par l'entremise du Secrétaire Général, ainsi que les Etats admis à ester en justice devant la Cour.

Article 41.

(1) La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

(2) En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de Sécurité.

Article 42.

(1) Les parties sont représentées par des agents.

(2) Elles peuvent se faire assister devant la Cour par des conseils ou des avocats.

Article 43.

(1) La procédure a deux phases: l'une écrite, l'autre orale.

(2) La procédure écrite comprend la communication à juge et à partie des mémoires, des contre-mémoires, et, éventuellement, des répliques, ainsi que de toute pièce et document à l'appui.

(3) La communication se fait par l'entremise du Greffe dans l'ordre et les délais déterminés par la cour.

(4) Toute pièce produite par l'une des parties doit être communiquée à l'autre en copie certifiée conforme.

(5) La procédure orale consiste dans l'audition par la Cour des témoins, experts agents, conseils et avocats.

Article 44.

(1) Pour toute notification à faire à d'autres personnes que les agents, conseils et avocats, la Cour s'adresse

directement au gouvernement d l'Etat sur le territoire duquel la notification doit produire effet.

(2) Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuves.

Article 45.

Les débats sont dirigés par le Président et à défaut de celui-ci par le Vice-Président; en cas d'empêchement, par le plus ancien des juges présents.

Article 46.

L'audience est publique, à moins qu'il n'en soit autrement décidé par la Cour ou que les deux parties ne demandent que le public ne soit pas admis.

....

Article 47.

(1) Il est tenu de chaque audience un procès-verbal signé par le Greffier et le Président.

(2) Ce procès-verbal a seul caractère authentique.

Article 48.

La Cour rend des ordonnances pour la direction du procès, la détermination des formes et délais dans lesquels chaque partie doit finalement conclure; elle prend toutes les mesures que comporte l'administration des preuves.

Article 49.

La Cour peut, même avant tout debat, demander aux agents de produire tout document et de fournir toutes explications. En cas de refus, elle en prend acte.

Article 50.

A tout moment la Cour peut confier une enquête ou une expertise à toute personne, corps, bureau, commission ou organe de son choix.

Article 51.

Au cours des débats, toutes questions utiles sont posées aux témoins et experts dans les conditions que fixera la Cour dans le réglement visé à l'article 30.

Article 52.

Après avoir reçu les preuves et témoignages dans les délais déterminés par elle, la Cour peut écarter toutes dépositions ou documents nouveaux qu'une des parties voudrait lui présenter sans l'assentiment de l'autre.

Article 53.

(1) Lorsqu'une des parties ne se présente pas, ou s'abstient de faire valoir ses moyens, l'autre partie peut demander à la Cour de lui adjuger ses conclusions.

(2) La Cour, avant d'y faire droit, doit s'assurer non seulement qu'elle a compétence aux termes des articles 36 et 37, mais que les conclusions sont fondées en fait et en droit.

Article 54.

(1) Quand les agents, avocats et conseils ont fait valoir, sous le contrôle de la Cour, tous les moyens qu'ils jugent utiles, le Président prononce la clôture des débats.

(2) La Cour se retire en Chambre du Conseil pour délibérer.

(3) Les délibérations de la Cour sont et restent secrètes.

Article 55.

Les décisions de la Cour sont prises à la majorité des juges présents.

En cas de partage de voix, la voix du Président ou de celui qui le remplace est prépondérante.

Article 56.

L'arrêt est motivé.

Il mentionne les noms des juges qui y ont pris part..

* * *

Une innovation qui, au surplus, confirme la pratique est introduite dans l'article 57, paragraphe 1, qui consacre au profit non seulement du juge dissident mais de tout juge le droit de joindre à l'arrêt l'exposé de son opinion individuelle.

Article 57.

Si l'arrêt n'exprime pas en tout ou en partie l'opinion unanime des juges, tout juge aura le droit d'y joindre l'exposé de son opinion individuelle.

Les articles 58 à 64 ne comportent aucun changement dans le texte français;les rectifications de forme apportées au texte anglais des articles 61 (substitution de: judgment à: sentence, dans le paragraphe 5) et 62, paragraphe 1 (suppression des mots: as a third party) n'en altèrent pas le sens.

Article 58.

L'arrêt est signé par le Président et par le Greffier. Il est lu en séance publique, les agents dûment prévenus.

Article 59.

La décision de la Cour n'est obligatoire que pour les parties en litige et dans le cas qui a été décidé.

Article 60.

L'arrêt est définitif et sans recours. En cas de contestation sur le sens et la portée de l'arrêt, il appartient à la Cour de l'interpréter à la demande de toute partie.

Article 61.

(1) La revision de l'arrêt ne peut être éventuellement demandée à la Cour qu'a raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, etait inconnu de la Cour et de la partie qui demande la revision, sans qu'il y ait, de sa part, faute à l'ignorer.

(2) La procédure de revision s'ouvre par un arrêt de la Cour constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la revision, et déclarant de ce chef la demande recevable.

(3) La Cour peut subordonner l'ouverture de la procédure en revision à l'exécution préalable de l'arrêt.

(4) La demande en revision devra être formée au plus tard dans le délai de six mois après la découverte du fait nouveau.

(5) Aucune demande de revision ne pourra être formée après l'expiration d'un délai de dix ans à dater de l'arrêt.

Article 62.

(1) Lorsqu'un Etat estime que dans un différend un intérêt d'ordre juridique est pour lui en cause, il peut adresser à la Cour une requête,à fin d'intervention.

(2) La Cour décide.

Article 63.

(1) Lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffier les avertit sans délai.

(2) Chacun d'eux a le droit d'intervenir au procès, et s'il exerce cette faculté, l'interprétation contenue dans la sentence est également obligatoire à son égard.

Article 64.

S'il n'en est autrement décidé par la Cour, chaque partie supporte ses frais de procédure.

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